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Montana Major Facility Siting Act

Title 85, Chapter 20, MCA (1983)

Administrative Rules
(Annotated)

Board of Natural Resources and Conservation

Published by

Energy Division
Department of Natural Resources and Conservation
Capitol Station
Helena, MT 59620

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PREFACE

This document contains annotated administrative rules of the Montana Major Facility Act (Chapter 20, MCA-1983). Sub-chapters 15 through 55 were adopted by the Board of Natural Resources and Conservation in December, 1984, Sub-chapter 9 was adopted in July, 1983, and Sub-chapter 12 was adopted in April, 1978.

The annotations are not part of the rules and are not intended to be used for legal reference. They have been included to give guidance to applicants and other users of the rules and to provide cross-references, citations to useful literature, locations of maps, and explanatory notes. The annotations are set off from the text by a double space and parentheses. A copy of the rules without annotations may be obtained from the Secretary of State.

Questions regarding these regulations may be directed to:

Bureau Chief
Facility Siting Bureau
Energy Division
Montana Department of Natural Resources
and Conservation
Capitol Station
Helena, MT 59620
(406)444-6812

ABBREVIATIONS

ARM	Administrative Rules of Montana
ASCS	Agricultural Stabilization and Conservation Service
AUM	Animal unit month
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BOR	Bureau of Reclamation
cfs	cubic feet per second
Eff.	effective
FEMA	Federal Emergency Management Agency
IMP.	implemented
kV	kilovolt
MAR	Montana Administrative Register
MBMG	Montana Bureau of Mines and Geology
MCA	Montana Codes Annotated
MDFWP	Montana Department of Fish, Wildlife and Parks
MDHES	Montana Department of Health and Environmental Sciences
MDLI	Montana Department of Labor and Industry
MDNRC	Montana Department of Natural Resources and Conservation
MSU	Montana State University
NPS	National Park Service
SCS	Soil Conservation Service
SHPO	State Historic Preservation Office
UM	University of Montana
USC	United States Code
USDA	United States Department of Agriculture
U.S.EPA	United States Environmental Protection Agency
USFS	United States Forest Service
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey

Sub-Chapter 15
General Provisions

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36.7.1501 DEFINITIONS Unless the context requires and clearly states otherwise, in these rules:

(1) "Act" means the Montana Major Facility Siting Act, Title 75, Chapter 20, MCA.

(2) "Alternative technological component" means a reasonable alternate design for a process area or component of an energy generation or conversion facility, including, but not limited to, cooling systems, fuel handling or transport systems, pollution control systems, coal combustion, and heat transfer systems.

(3) "Alternative transmission technology" means a reasonable alternate design for a transmission facility including, but not limited to, underground construction, alternative voltage or conductor sizes, direct current transmission, and alternative circuit design or deployment.

(4) "Applicant" means a person filing an application with the department and any other entities that will jointly own, operate, market, and/or use the output or services of the facility applied for in the application.

(5) "Application" means an application to the department for a certificate of environmental compatibility and public need under 75-20-211, MCA.

(6) "Assistance" means public support or subsidies including, but not limited to, tax credits, accelerated depreciation, loan guarantees, low interest loans, price supports and price guarantees.

(7) "Associated facilities" is defined in 75-20-104(3), MCA.

(8) "Area of concern" means a geographic area or location specified in ARM 36.7.2505, ARM 36.7.2534, and ARM 36.7.2535 where construction or operation of a facility will likely damage the significant environmental values peculiar to the area or where environmental constraints may pose siting or construction problems, but where formal public recognition or designation has not been granted.

(9) "Baseline data" means detailed information which describes the existing natural, physical, cultural, social, and economic environment.

(Annotation: Baseline data may include an analysis of impact risk, where it is appropriate.)

(10) "Baseline study" means a detailed analysis of alternative sites or alternative routes and impact zones for purposes of impact assessment and comparison and selection of a preferred site or preferred route.

(11) "Board" means the board of natural resources and conservation.

(12) "Board of health" means the board of health and environmental sciences.

(13) "Block load" means the load of an energy consumer whose individual demand is 5 percent or more of the applicant's peak demand on a linear facility or the load of any other customer that an applicant serves under a specific contractual agreement rather than under a general rate category.

(14) "Candidate siting area" means a geographic area selected pursuant to ARM 36.7.2510 that is located within an economically feasible siting area and is suitable for locating an energy generation or conversion facility.

(15) "Centerline" means a location for a linear facility within an approved route accurately depicted to within 250 feet unless otherwise specified by the board by a line one millimeter or less in width drawn on a 1:24,000 map, and which may or may not be surveyed.

(a) "Alternative centerline" means one of the alternative locations potentially suitable for construction of a linear facility that the applicant or the department has selected after study of the approved route described in the certificate and that has been depicted on overlays to the base map described in ARM 36.7.4003(1);

(b) "Approved centerline" means the precise location for a linear facility that is approved by the board and accurately depicted to within 250 feet, unless otherwise specified, in the certificate on the map described in ARM 36.7.4006(3);

(c) "Preferred centerline" means the applicant's desired location for a linear facility as depicted on overlays to the base map described in ARM 36.7.4003(1) after study of the approved route and the centerline for which board approval is sought.

(16) "Centerline evaluation" means an analysis to determine the location of the centerline of a linear facility within the approved route.

(17) "Certificate holder" means an applicant that has been granted a certificate or an approved transfer by the board.

(18) "Competitive utility" means a utility that has neither a legally protected service area nor a utility mandate to serve all demands for the energy form to be produced by a proposed facility.

(Annotation: "Utility" is defined in 75-20-104(13), MCA as "any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use." This includes two very different classes of potential utility applicants who operate under different circumstances. Definition (18) "competitive utility," and (58) "service area utility," distinguish the two classes of utility, and the rules for application requirements for need (ARM 2201-2303) and alternatives (2401-2405) and the decision standards for need (ARM 3502-3503) incorporate this distinction. Definitions (47) and (48) define "non-utilities" and "non-utility facilities.")

(19) "Corridor" means:

(a) "Approved corridor" means an area of land of a width specified by the board that is generally suitable for siting a linear associated facility.

(b) "Study corridor" means a geographical area of variable width within the study area that is potentially suitable for siting a linear facility as determined by the reconnaissance and that contains one or more routes.

(20) "Curtailable load" means an energy load that may be interrupted by a utility under contractual arrangement with a customer.

(21) "Decommission" means to permanently remove a facility from service, including any physical changes such as dismantling the facility at the end of its useful life and reclaiming the site or route.

(22) "Demand" means the quantity of energy that customers would be willing to purchase in a specific time period.

(23) "Department" means the department of natural resources and conservation.

(24) "Department of health" means the department of health and environmental sciences.

(25) "Direct unit costs" means the annual costs of operating a facility including amortized capital costs, taxes, operating, maintenance, administrative, fuel and other variable costs of production, divided by the annual output of the facility. Direct unit costs are not adjusted for assistance.

(26) "Economically feasible siting area" means a geographic area where a facility could be located with a resulting levelized delivered cost of energy that is no more than thirty (30) percent higher than the lowest levelized delivered cost location for the facility.

(27) "End-use" means the ultimate use of energy, such as space heating, water heating, electric motors, and process heat.

(28) "Energy conservation" means reducing the amount of energy required to accomplish a given quantity of work through increases in efficiency in energy use, production or distribution.

(29) "Energy demand" means the demand by customers for kilowatt hours of electricity, thousand cubic feet of gas or other quantities of energy, in a specific time period.

(30) "Energy resource" means a resource that can be converted into energy for ultimate end-use, either directly or by intermediate conversion into electricity, synthetic gas or synthetic liquid hydrocarbons. Energy resources include, but are not limited to, coal, natural gas, liquid hydrocarbons, nuclear, geothermal resources, wind, solar, biomass and falling water.

(31) "Energy technology" means a technology for converting an energy resource into the energy form to be produced by a proposed facility.

(32) "Exclusion area" means a geographic area specified in ARM 36.7.2503 and ARM 36.7.2532 legally designated for its environmental values and having legally defined boundaries wherein facility construction or operation is prohibited, excepting those portions of the area where permission to site a facility has been obtained from the legislative or administrative unit of government with direct authority over the area.

(33) "Facility" is defined in 75-20-104(10), MCA.

(34) "Impact zone" means the study area in which data is collected during the baseline study in order to make a determination of the impacts from construction, operation,

maintenance or decommissioning of a proposed facility or associated facility at the preferred and reasonable alternative locations.

(35) "Inputs" means the basic resources, including materials, equipment, and labor required to construct and operate a facility.

(36) "Interruptible load" means a load that by contract can be interrupted in the event of a capacity deficiency on the supplying system.

(37) "Inventory" means the collection and mapping of environmental information within candidate siting areas or study corridors for the purpose of selecting alternative sites or alternative routes.

(38) "Levelized cost" means the present value of the real cost stream over the life of a project, amortized over the project life.

(39) "Levelized unit cost" means the levelized cost divided by the annual output of the project.

(40) "Linear facility" means an electric transmission line or a gas or liquid pipeline covered by the act.

(41) "Load center" means any substation or geographic concentration of substations within a 100 square mile area containing at least 5 percent of an applicant's load.

(42) "Long-range plan" means a person's plan for the construction and operation of facilities in the ensuing ten years, submitted to the department under 75-20-501, MCA.

(43) "Market area" means a geographic area where a significant portion of the output of a facility proposed by a competitive utility or nonutility would be sold.

(44) "Mitigation" means avoiding an impact by not taking a certain action or parts of an action, or minimizing impacts by limiting the degree or magnitude of an action and its implementation, or rectifying an impact by repairing, rehabilitating, or restoring the affected environment, or reducing or eliminating an impact over time by preservation and maintenance operations during the life of an action, or compensating for an impact by replacing or providing substitute resources or environments.

(45) "Monitoring data" means environmental information that is collected to measure changes resulting from construction, operation, maintenance or decommissioning of a facility approved by the board or that is collected to determine compliance with the conditions of the certificate issued by the board.

(46) "No action alternative" means the alternative of not building a proposed facility or any other facility to meet the need or solve the problem a proposed facility would address.

(47) "Nonutility facility" means a facility whose output, except for incidental sales, will be used to produce goods or services other than energy prior to first sale.

(48) "Nonutility" means an applicant for a nonutility facility.

(49) "Outputs" means the principal product of a facility and the by-products and wastes produced by the facility.

(50) "Paralleling" means locating a proposed linear facility directly adjacent to or overlapping the right-of-way of an existing linear utility, transportation or communication facility.

(51) "Peak demand" means the maximum 30 minute energy demand by customers for kilowatts of electrical power, or thousand cubic feet per hour of gas, or other rates of delivery of energy.

(52) "Person" is defined by 75-20-104(11), MCA.

(53) "Reconnaissance" means a preliminary assessment of the study area based on published or readily available data used to select candidate siting areas or study corridors.

(54) "Road" means a way or course that is constructed or formed by substantial recontouring of land, clearing, or other action designed to be permanent or intended to permit passage by most four-wheeled vehicles for a significant period of time.

(55) "Route" means a preliminary location for a linear facility accurately depicted to within 0.1 mile as specified by a line one millimeter or less in width drawn on a 1:24,000 map.

(a) "Alternative route" means one of the alternative locations potentially suitable for the construction of a linear facility that the applicant has selected for baseline study and has depicted on the base map described in ARM 36.7.2543(2).

(b) "Approved route" means a linear strip of land of a width specified by the board on the map described in ARM 36.7.4001 that contains one or more alternative centerlines for a linear facility.

(c) "Preferred route" means the applicant's preferred location for a linear facility and the route for which a certificate is sought as depicted by the applicant on the base map described in ARM 36.7.2543(2).

(56) "Sector of demand" means classes of customers served by a service area utility. Before January 1, 1988, the classes of customers are defined as the categories reported by a regulated utility to the state public service commission, the federal energy regulatory commission, or the rural electrification administration. After January 1, 1988, the classes of customers are residential, commercial, industrial, and agricultural; the latter three sectors are defined by the U.S. office of management and budget standard industrial classification codes. The commercial sector consists of groups 50 through 97; the industrial sector consists of groups 10 through 49; and the agricultural sector consists of groups 01 through 09. Rural residences not metered separately from agricultural loads may be included either in the residential or agricultural sector depending on the predominant usage of the energy form in question.

(57) "Sensitive area" means a geographic area or location specified in ARM 36.7.2504, ARM 36.7.2533, and ARM 36.7.2535 where construction or operation of a facility will likely damage the significant environmental values peculiar to the area or where environmental constraints may pose siting or construction problems and where these values or constraints have received formal public recognition or designation or are in the process of being designated at the time the application is filed.

(58) "Service area utility" means a utility with a legally protected service area or body of customers for whom it has a conventional utility mandate to serve all loads or wholesale energy suppliers with requirements contracts, participation agreements, or similar arrangements with such utilities for the energy form to be produced by a proposed facility. This includes, but is not limited to, investor-owned utilities, rural electric cooperatives, municipal energy utilities and public utility districts, and generating and transmission cooperatives.

(59) "Significant adverse impact" means a detrimental change in the social, economic, cultural, physical or natural environment as a result of the construction, operation, maintenance, or decommissioning of a facility, as determined by the board on the basis of the impact's severity, duration, geographic extent, or frequency of occurrence or the uniqueness of the affected environmental value or its importance to the state and/or to society.

(60) "Site" means the parcel of land the applicant would acquire to construct the buildings, components, and nonlinear associated facilities comprising an energy generation or conversion facility.

(a) "Alternative site" means one of the alternate site locations potentially suitable for the construction of an energy generation or conversion facility that the applicant has selected for baseline study.

(b) "Preferred site" means the applicant's preferred location for an energy generation or conversion facility and the site for which a certificate is sought.

(Annotation: For a fossil-fueled energy generation or conversion facility, a site may include a square mile or more of land, but the exact size is left to the applicant to determine based on the specific requirements of the proposed facility.)

(61) "Siting study" means an analysis conducted by the applicant to identify a preferred site or preferred route.

(62) "Study area" means the geographical region containing the locations where a proposed facility reasonably could be sited, considering the applicant's service area, the intended market area(s) of the product the facility produces or transports, and/or the electrical system problems that would be solved by the facility.

(63) "Utility facility" means a facility whose output will be marketed as energy.

(History: Sec. 75-20-105, MCA; IMP, 75-20-104, and 75-20-105(2), MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.1502 PUBLIC RECORD--CONFIDENTIALITY Any records, materials, or other information furnished pursuant to the act or these rules are a matter of public record and are open to public inspection. Any records, materials, or information unique to an applicant which would, if disclosed, reveal

methods or processes entitled to protection as trade secrets will be maintained as confidential if so required by a court of competent jurisdiction. The burden for obtaining such relief is upon the applicant.

(History: Sec. 75-20-105, MCA; IMP, 75-20-105, MCA, and Mont. Const. 1972, Art. II, Sec. 9; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.1503 FORMAT (1) Documents required by the act and explained in these rules must be typed, printed, or otherwise legibly reproduced on 8 1/2" x 11" paper, or as otherwise approved in writing by the department.

(2) The text and attachments shall be consistently and consecutively numbered.

(3) Maps, drawings, charts, photographs or other illustrations may accompany a document as separate attachments that are sized and scaled appropriately to the material presented. Attachments must be identified as "attachment." An attachment comprising more than one sheet must be numbered "sheet _____ of _____."

(4) Documents must state the name, title, telephone number, and post office address of the person to whom communications regarding the document are to be made.

(History: Sec. 75-20-105, MCA; IMP, 75-20-105; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Sub-Chapter 16
Long-Range Plans

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36.7.1601 GENERAL REQUIREMENTS (1) A person contemplating construction of a facility in Montana in the ensuing ten years shall submit a long-range plan to the department on or before April 1 of each year, except that a rural electric cooperative may submit the information specified in 75-20-501(4), MCA in lieu of the long-range plan.

(2) A long-range plan must cover the ten year period beginning April 1 of the year in which the long-range plan is submitted.

(3) A person submitting a long-range plan shall submit 5 copies of the long-range plan at the time of filing to the department, capitol station, Helena, Montana 59620, and shall file the additional copies required for public notice pursuant to 75-20-501(3), MCA.

(4) To the extent that material required by ARM 36.7.1604 has been previously submitted in earlier long-range plans and is still accurate, it may be incorporated by reference.

(History: Sec. 75-20-105, MCA; IMP, 75-20-501; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.1602 IDENTIFICATION OF FACILITIES AND EXPECTED APPLICATION DATES In addition to the requirements of 75-20-501, MCA, the long-range plan must include the estimated date that construction will begin and be completed for each anticipated facility, and the approximate filing date for each anticipated application.

(1) In accordance with the act, sufficient time must be allowed for department study and board hearings between the application filing date and the date construction of the facility is expected to begin.

(Annotation: For applications with 1 year and 22-month maximum department study periods, at least 24 and 36 months, respectively, should be allowed for "worst-case" contingencies in the long-range planning calendar between the projected application filing date and the initiation of construction of the facility.)

(2) For transmission facilities the long-range plan shall identify tentative end points and intermediate substations.

(History: Sec. 75-20-105, MCA; IMP, 75-20-501; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.1603 SERVICE AREA UTILITIES, FORECASTED ENERGY DEMAND AND SUPPLY For a service area utility with a service area in Montana or a service area utility that is contemplating construction of a facility as defined by 75-20-104(10)(a), MCA, a long-range plan must include forecasted annual energy demand data and projected energy resources for each of the ensuing 10 years beginning with the present year for each state in its service area. Should completion of a facility be scheduled to occur beyond this forecast period, the forecast period should be extended to include the time necessary for completion of the

facility. Demand must be shown for each sector of demand as defined in ARM 36.7.1501. A long-range plan must include the following:

(1) A description of the methods and the assumptions used to make the forecasts, and the sensitivity of the forecasts to changes in the assumptions;

(Annotation: Assumptions may include, for example, assumptions about population growth, changes in energy use patterns and conservation by customer classes, economic conditions, and changes in price and rate structure.)

(2) A description of the generation and conversion resources including the general location, size and type, purchases of energy, conservation and renewable energy use, or other methods by which the utility plans to balance loads and resources;

(Annotation: The general location of an energy resource should be specified as closely as is known at the time of filing the long-range plan.)

(3) Estimated costs of the planned facilities and a general discussion of their accuracy; and

(4) An explanation of the planning methods and criteria that will be used to decide when new generation and conservation resources are needed, what types of resources should be built or acquired, and their size and location.

(History: Sec. 75-20-105, MCA; IMP, 75-20-501; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.1604 SERVICE AREA UTILITIES, POOLING, INTERCONNECTION, EXCHANGE, PURCHASE AND SALE AGREEMENTS (1) A long-range plan for a service area utility must include either a copy of any and all contracts with regional power marketing agencies, and each pooling, interconnection, and firm exchange, purchase or sale agreement to which the utility is a party, or the following information for each such agreement:

(a) a brief description of the obligations of and the benefits to the utility under the agreement;

(b) a list of all parties to the agreement;

(c) the time period during which the agreement is in effect;

(d) the amount of the relevant energy form to be exported and imported, and the rate and timing of delivery under the agreement; and

(e) the financial agreements.

(History: Sec. 75-20-105, MCA; IMP, 75-20-501; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.1605 SERVICE AREA UTILITIES, NEGOTIATIONS OVER RESOURCE ACQUISITION OR SALE, POOLING, INTERCONNECTION, TRANSMISSION, EXCHANGE, PURCHASE OR SALE OF ENERGY For a service area utility a long-range plan must include a description of all current and planned negotiations with respect to acquisition or sale of resources, pooling, interconnection, transmission, and firm exchange, purchase or sale of energy. The description must include a list of the parties to any negotiations and a general discussion of the history and current status of the negotiations.

(History: Sec. 75-20-105, MCA; IMP, 75-20-501; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.1606 COMPETITIVE UTILITIES AND NONUTILITIES, PROJECTED DEMAND A long-range plan from competitive utilities and nonutilities contemplating construction of a facility as defined in 75-20-104(10), MCA, must include:

(1) A discussion of the projected marketability of the energy or product to be produced or transported, including:

(a) projected demand and estimated market price;

(b) potential markets;

(c) estimated production; and

(d) a description of the assumptions used to make the demand forecasts, including the effects of changes in the costs of alternative forms of energy and conservation, and other changes that may effect the demand for the output of the proposed facility.

(Annotation: Other assumptions may include, for example, population growth, economic conditions affecting commercial and industrial activity, and price and elasticity of demand.)

(2) For energy generation and conversion facilities, a description of the process type to be used in the proposed facility.

(3) For energy generation and conversion facilities, a description of plans for transporting the output of the facility to potential markets.

(History: Sec. 75-20-105, MCA; IMP, 75-20-501; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Sub-Chapter 17 Reserved

Sub-Chapter 18
Waivers

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36.7.1801 WAIVER OF PROVISIONS OF CERTIFICATION PROCEEDINGS An applicant may request a waiver of any portions of the act, as provided for in 75-20-304, MCA.

(History: Sec. 75-20-105, MCA; IMP, 75-20-304; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.1802 NOTIFICATION OF REQUEST FOR WAIVER The applicant shall submit a written notice of request for a waiver to the board, by certified mail or personal service. The notice must be accompanied by an affidavit of service showing that copies of the notice have been served on the department and the department of health and the units of local government and agencies listed in 75-20-211(3), MCA, and that public notice of the request for waiver has been given. Public notice shall be given to persons residing within the area in which any portion of the facility would be located if the waiver is granted. Notice shall be given by publication of a display ad containing a summary description of the facility and a summary of the contents of the request for waiver, once in each of three consecutive weeks in newspapers of general circulation in that area.

(History: Sec. 75-20-105, MCA; IMP, 75-20-304; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.1803 CONTENTS OF NOTICE OF REQUEST FOR WAIVER PURSUANT TO 75-20-304(1), MCA For a waiver of provisions described in 75-20-304(1), MCA, the notice of request for waiver must contain the following information:

(1) An explanation of the need or demand for the proposed facility as described in ARM 36.7.2201 - ARM 36.7.2218 of this chapter including a demonstration of the immediate and urgent need for the facility and nature of the consequences that would follow from a failure to obtain a waiver;

(2) A description of alternatives to the proposed facility which were considered and an explanation of the reasons for selecting the proposed facility;

(3) A description of the preferred site or preferred route for the proposed facility, alternative sites or routes which were considered, an explanation of the reasons for selecting the preferred site or route, and a description of the significant environmental advantages and disadvantages of the preferred and alternate sites or routes;

(4) A description of the circumstances which prevented the applicant from determining that a need for the proposed facility existed sufficiently in advance to comply with the requirements of the act; and

(5) A listing of the provisions of the act and this chapter for which the waiver is requested.

(History: Sec. 75-20-105, MCA; IMP, 75-20-304(1); NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.1804 CONTENTS OF NOTICE OF REQUEST FOR WAIVER PURSUANT TO 75-20-304(2), MCA For a waiver to replace or relocate a facility or associated facility that has been damaged or destroyed as described in 75-20-304(2), MCA, the notice of request for waiver must contain the following information. This rule does not, however, apply to emergency repairs to a facility or associated facility.

(1) A description of the event which caused the damage to or destruction of the facility or associated facility;

(2) A description of the extent of damage or destruction;

(3) A description of the effect on customers;

(4) An explanation of proposed actions to replace, repair or relocate the damaged or destroyed facility or associated facility; and

(5) A listing of the provisions of the act and this chapter for which the waiver is requested.

(History: Sec. 75-20-105, MCA; IMP, 75-20-304(2); NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.1805 CONTENTS OF NOTICE OF REQUEST FOR WAIVER OF REQUIREMENTS RELATING TO CONSIDERATION OF ALTERNATIVE SITES PURSUANT TO 75-20-304(3), MCA For a waiver of provisions described in 75-20-304(3), MCA, the request for waiver must contain information satisfying 75-20-304(3)(d), MCA, which must include an analysis indicating a net positive effect on the county economy. The analysis must include a discussion, with supporting data, of the size of the population influx resulting from direct and indirect employment associated with facility construction and operation, and the cost of providing services to the increased population. The discussion must include the facility's construction period and a portion of the facility's operational period adequate to address the following:

(1) The county's capability to supply construction and operational labor to the proposed facility, supported by data on the existing labor force, the supply of skilled labor within the county to meet the job requirements of the facility, and present and projected unemployment rates;

(2) Effects on local businesses of the increased income resulting from the facility's payroll;

(3) A fiscal analysis comparing increased tax revenue resulting from the facility with increased local expenditures necessitated by the population influx associated with the project, including the relative timing of expected expenditure requirements compared to expected tax increases, as determined by documented consultation with appropriate local government officials; and

(4) Economic impacts on residents resulting from changes in ambient environmental factors caused by the proposed facility.

(History: Sec. 75-20-105, MCA; IMP, 75-20-304(3); NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.1806 BOARD ACTION ON REQUEST FOR WAIVER (1) Within ninety days after receipt of the information required by ARM 36.7.1803 or ARM 36.7.1805, the board shall give notice and set a date for a hearing.

(2) The board shall give notice and set a date for a hearing and render a decision as soon as practicable after receipt of the information required by ARM 36.7.1804.

(a) This rule does not apply to emergency repairs of a facility or associated facility.

(History: Sec. 75-20-105, MCA; IMP, 75-20-304; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.1807 CONTENT OF AN APPLICATION FOLLOWING RECEIPT OF WAIVER PURSUANT TO 75-20-304(3), MCA (1) An application for a facility which has been granted a waiver pursuant to 75-20-304(3), MCA, must contain applicable information required by ARM 36.7.2511, ARM 36.7.2512, ARM 36.7.2514, and ARM 36.7.2515 for the preferred site only.

(2) Information requirements for linear associated facilities are not affected by the waiver and must be addressed as applicable unless the applicant can demonstrate that less detailed information meets the requirements of ARM 36.7.2501 - ARM 36.7.2547, based on considerations of size or length of the linear associated facilities, the homogeneity of the geographic area that would be traversed by these facilities, or that impacts are not likely to occur.

(History) Sec. 75-20-105, MCA; IMP, 75-20-211, 75-20-304(3) and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Sub-Chapter 19
Notice of Intent to File an Application

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36.7.1901 PURPOSE OF NOTICE The primary purpose of the notice of intent is to provide for early consultation and exchange of information between the potential applicant, the department, other affected agencies, and the public and to initiate preapplication planning.

(History: Sec. 75-20-105, MCA; IMP, 75-20-214, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.1902 CONTENT OF NOTICE OF INTENT In addition to the information required by 75-20-214, MCA, the notice of intent for a facility must contain the study plans, scopes of work, and study methods that have been or will be used to gather the information required by the following rules:

(1) Service area utilities, ARM 36.7.2201 - ARM 36.7.2218;
(2) Competitive utilities, ARM 36.7.2218 - 36.7.2303;
(3) ARM 36.7. 2401 - ARM 36.7. 2417; and
(4) ARM 36.7.2501 - ARM 36.7.2547.

(History: Sec. 75-20-105, MCA; IMP, 75-20-214, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.1903 CHANGES OR ADDITIONS TO NOTICE If a potential applicant desires to substantively change or add to a notice of intent after the notice is formally filed, the potential applicant shall inform the department of the substantive change or addition by certified mail or personal delivery.

(History: Sec. 75-20-105, MCA; IMP, 75-20-214, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.1904 FILING FEE REDUCTION When an application is filed for a facility 12 months or more after the filing of a valid notice of intent concerning that facility, the applicant is entitled to a 5 percent reduction of the filing fee as provided by 75-20-214, MCA, if the facility type, size, and preferred location are not substantially changed from that specified in the notice.

(History: Sec. 75-20-105, MCA; IMP, 75-20-214, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Sub-Chapter 20 Reserved

Sub-Chapter 21
General Requirements for Applications

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(Annotation: An applicant for a certificate is encouraged to meet with the department and department of health at an early stage of preparing the application to discuss the application content and the requirements of this sub-chapter.)

36.7.2101 REQUIREMENTS OF THE DEPARTMENT OF HEALTH AND BOARD OF HEALTH An application must contain the information required by the department of health and board of health to determine compliance with applicable standards, permit requirements, and implementation plans under their jurisdiction for the primary and reasonable alternate locations for the proposed facility pursuant to 75-20-216(3), MCA.

(Annotation: The following statutes and regulations may be applicable: Regulation of Food Establishments, Title 50, Chapter 50 MCA and Title 16, Chapter 10, sub-chapters 2 and 4; Regulation of Establishments Providing Lodging Space Accommodations, Title 50, Chapter 51 MCA and Title 16, Chapter 10, sub-chapter 6; Regulation of Tourist Campgrounds and Trailer Courts, Title 50, Chapter 52 MCA and Title 16, Chapter 10, sub-chapters 7 and 9; Clean Air Act of Montana, Title 75, Chapter 2 MCA and Title 16, Chapter 8, sub-chapters 7, 8, 9, 11, 12 and 14; Nuclear Regulation, Title 75, Chapter 3 MCA and Title 16, Chapter 40; Water Quality, Title 75, Chapter 5 MCA and Title 16, Chapter 20, sub-chapters 6, 7, 9, 10 and 16; Public Water Supplies, Distribution and Treatment, Title 75, Chapter 6 MCA and Title 16, Chapter 20, sub-chapters 2 and 4; Licensing of Refuse Disposal and Transportation, Title 75, Chapter 10, Part 2 MCA and Title 16, Chapter 14; Hazardous Waste Management, Title 75, Chapter 10, Part 4 MCA and Title 16, Chapter 44; and Regulation of Subdivisions, Title 76, Chapter 4 MCA and Title 16, Chapter 16.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-105, and 75-20-211, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2102 APPLICATION, NUMBER OF COPIES (1) The applicant shall submit 20 copies of the application at the time of filing to the department, capitol station, Helena, Montana 59620, and eight copies to the department of health, capitol station, Helena, Montana, 59620. The applicant may submit fewer copies, especially of maps, map overlays, exhibits, appendices, or attachments as defined in ARM 36.7.2103(3)(h) and (i), upon prior written approval from the department. For the contact prints providing photographic coverage, required by ARM 36.7.2514(5) and ARM 36.7.2543(4), one copy is sufficient. The applicant shall promptly furnish one additional copy if requested by the department.

(History: Sec. 75-20-105, MCA; IMP, 75-20-105, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2103 APPLICATION, FORMAT (1) An application shall be submitted in a loose leaf format, except for oversized material such as maps and map overlays.

(Annotation: A loose leaf format is specified in order to facilitate the addition or substitution of updated or supplemental material.)

(2) An application must contain an index cross-referencing the material contained in the application.

(3) An application shall be organized according to the following general categories:

(a) introductory material;

(Annotation: This material includes identification of the applicant(s), the name of the facility, a brief overview of the proposed facility including the amount and type of output or other measures of size or capacity, a summary discussion of physical characteristics, the purpose of the facility, how the facility fits into the applicant's system, how the facility relates to other projects or facilities planned or under consideration by the applicant or by other persons, definitions of terms, a description of previous state and federal actions concerning the facility, if any, and a brief summary of the content of the application.)

(b) description of the proposed facility;

(Annotation: This material includes applicable information required by ARM 36.7.3001-36.7.3012.)

(c) cost of the facility;

(Annotation: This material includes the information required by ARM 36.7.2109-36.7.2113.)

(d) explanation of the need for the facility;

(Annotation: This material includes applicable information required by ARM 36.7.2201-36.7.2303 and any other material the applicant deems relevant to the explanation of need.)

(e) analysis of alternatives to the proposed facility;

(Annotation: This material includes applicable information required by ARM 36.7.2401-36.7.2417.)

(f) alternative siting study;

(Annotation: This material includes applicable information required by ARM 36.7.2501-36.7.2547.)

(g) environmental concerns;

(Annotation: This material includes applicable information required by ARM 36.7.2501-36.7.2547.)

(h) all maps larger than 8 1/2" X 11" in size and aerial photography shall be presented as an attachment entitled "attachment a: maps and aerial photography";

(i) technical reports, reference or source documents, and other supplementary material provided by the applicant shall be presented as separate, consecutively arranged attachments, beginning with "attachment b."

(History: Sec. 75-20-105, MCA; IMP, 75-20-105, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2104 DOCUMENTATION OF INFORMATION SOURCES AND OMISSION OF CERTAIN INFORMATION REQUIREMENTS (1) An application must contain a list of sources of information used in preparing the application. An application must specify when field investigations were conducted.

(2) An application should include only information relevant to the facility. The application requirements in these rules address a comprehensive range of issues for the wide range of facilities covered by the Act. The applicability or relevance of the requirements to a particular facility are dependent on its type, its design, how its output will be marketed, its size or length, and on the characteristics and complexity of the geographic area(s) where the facility may be located. An application shall contain the information required by ARM 36.7.1902 - ARM 36.7.3012 unless specific provisions for submitting less information are contained in the rule, or unless the department gives written permission, prior to filing the application, to omit certain information. Unless a rule provides differently, an applicant desiring to omit information it considers irrelevant to the project shall submit to the department a written request to make the omission, along with documentation justifying its request. The department shall review the applicant's request and shall make a written determination of whether the information may be omitted. If there is a substantial cost to the department to verify the applicant's justification, the applicant shall contract with the department and reimburse it for expenses incurred pursuant to 75-20-106, MCA.

(History: Sec. 75-20-105, MCA; IMP, 75-20-105, and 75-20-211, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2105 SUPPLEMENTAL MATERIAL (1) The applicant shall submit supplemental material to the department and the department of health within 30 days after it becomes available following filing of an application. The applicant shall submit supplemental material in the form of substitute pages or insertions to the application as originally filed. Supplemental material includes information to update or finalize information submitted with the original application and the following:

(a) studies that an applicant routinely or periodically updates;

(b) changes in the application that result from a change in any statute, standard, permit requirement or implementation plan affecting the facility; and

(c) any other changes materially affecting the basis of need for the facility, the engineering design of the facility, the costs or the environmental impact of the facility.

(2) The penalty defined by 75-20-408, MCA, shall be imposed for failure to submit supplemental material available to the applicant but not known to the department or department of health, effective within 30 days of the date the material becomes available to the applicant. If the material is extensive, the applicant may within the 30-day period submit to the department or department of health a notice of intent to supplement the application with a description of the material to be supplied, and supply the material without undue delay in a time period agreed to by the applicant and the department.

(History: Sec. 75-20-105, MCA; IMP, 75-20-105, 75-20-211, and 75-20-213, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2106 CHANGES IN AN APPLICATION (1) Pursuant to 75-20-213(2), MCA, an applicant may change or add to an application. The applicant shall inform the department and the department of health of the change or addition by certified mailing or personal service. The applicant shall describe the change in sufficient detail to allow the department to make the determination required by ARM 36.7.2107 and shall supply the information in the form of substitute pages or insertions to the application as originally filed.

(History: Sec. 75-20-105, MCA; IMP, 75-20-105, 75-20-211, and 75-20-213, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2107 AMENDMENT TO APPLICATION--NEW APPLICATION (1) The department may determine that a change or addition to an application submitted by the applicant pursuant to ARM 36.7.2105 or ARM 36.7.2106 requires an amendment to the original application and additional filing fees as provided by 75-20-213, MCA, if the change or addition would be likely to involve the following:

(a) increased or significantly different environmental impacts than would have been likely based on the information contained in the original application;

(b) significant changes in the basis of the need for the facility; or

(c) significant changes in the economics of alternatives to the proposed facility as required by ARM 36.7.2401 - ARM 36.7.2411.

(2) The department may determine that a new application and filing fee is required if the extensive nature of a change or the timing of the notification of a change or addition to the original application would not allow the department, department of health or the other agencies listed in 75-20-216(5), MCA, to discharge their duties and responsibilities under the act and these rules under the statutory time requirements and filing fee or under contractural terms pursuant to 75-20-215(2), MCA. If a new application and filing fee is required, processing of the

original application shall be terminated. If the total filing fee was paid at the time of filing, unexpended portions of the fee shall be returned to the applicant or credited to the new fee at the applicant's request if a new application is to be filed. For an application being processed under a contract pursuant to 75-20-215(2), MCA, the applicant shall be billed for the department's expenses up to the date of termination. Any studies completed or partially completed at the time of termination that are relevant to an amended or new application shall not be duplicated.

(3) The department shall inform the applicant in writing, within 30 days of receipt of information provided under ARM 36.7.2105 or ARM 36.7.2106, of a determination that a change or addition to an original application requires an amendment or a new application.

(4) The applicant shall give notice upon filing an amendment or a new application as set forth in 75-20-211(3), (4) and (5), MCA.

(5) An amendment to an application shall explain any change or addition in a degree of detail comparable to that required for an original application.

(History: Sec. 75-20-105, MCA; IMP, 75-20-105, 75-20-211, 75-20-213, 75-20-215, and 75-20-216, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2108 RELATED PROJECTS--SINGLE FACILITY Related projects that address the same or closely related needs that the proposed facility would address may constitute a single facility for purposes of compliance with the application provisions of these rules. An application must explain the relationship of the proposed facility to other facilities or projects planned or under construction and must address all portions of the facility.

(History: Sec. 75-20-105, MCA; IMP, 75-20-105, and 75-20-211, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

(Annotation: The estimated cost of the facility will be used for two purposes. The first is for calculating the filing fee, as required by 75-20-215, MCA, and the second purpose, in conjunction with the requirements of 36.7.2110 and 2111, is for the comparison of alternatives.)

36.7.2109 ALL FACILITIES, ESTIMATED COST OF FACILITY (1) An application for a facility defined in 75-20-104(10), MCA, must contain estimates and a description of total costs and expenses attributable to the engineering, construction, and startup of the proposed facility and associated facilities up to the time of commercial operation. Cost estimates may be based on preliminary engineering or if available, standardized engineering estimates.

(2) As used herein, engineering costs include all direct costs related to planning, design, permitting, quality control, and land acquisition. Construction costs include costs related

to site or route preparation, erection and assembly, and commissioning costs. Cost estimates must be itemized into relevant categories as follows unless other categories are agreed to by the department:

(a) engineering and overhead costs;

(b) land acquisition costs, and site or right of way preparation costs;

(c) plant costs, itemized by major process area and by major equipment. For proprietary processes itemization by major process area is sufficient for the application;

(Annotation: Examples of major process areas for coal-fired generation plants are coal preparation, boiler, steam turbine generator, flue gas desulfurization, cooling, etc. Examples of major process areas for synthetic fuel plants are coal preparation, slurry preparation liquefaction, separation, gasification, gas treatment, hydrogen production, oxygen production, sulfur removal, methanation, product storage, etc. For transmission lines, major process areas include transmission lines, towers and substations.)

(d) costs of transportation links;

(e) mitigation costs;

(f) front end royalty payments;

(g) initial inventories of coal, chemicals or materials;

(h) startup expenses and working capital; and

(i) any other costs necessary and incidental to the construction of the facility and preparation for initial operation.

(3) The application must contain an explanation of the methods, including rules of thumb, used to estimate costs required by (2).

(4) An estimate must be presented of the accuracy of all cost estimates.

(5) Costs must be provided for all portions of the facility both in and outside Montana.

(Annotation: Only those costs of the facility in Montana will be used to calculate the filing fee.)

(6) All costs must be estimated by instantaneous total cost of construction escalated to the date of the projected start of construction. Escalated costs as of the projected start of construction must then be adjusted to the construction expenditure schedule based on percentages of total cost incurred in each period and escalated to the date of incurrence. Cost escalation must be based on the most appropriate Handy Whitman or other industry recognized and department approved construction cost index.

(Annotation: Instantaneous construction costs assume that equipment order, delivery and construction occur at the same date, thereby allowing differences in the length of time that all costs are subject to escalation. Instantaneous construction costs permit current estimates of construction

costs to be escalated to the starting date of construction without reference to where particular items fit into the construction schedule. Adjusting these costs to the construction expenditures schedule provides a correction for further escalation during the construction period. The result is a simple estimate of the total investment in the project, exclusive of allowance for funds used during construction, as of the time of completion.)

(7) The department may request additional detail on costs as necessary for comparison of alternatives.

(History: Sec. 75-20-105, MCA; IMP, 75-20-215, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2110 ENERGY GENERATION AND CONVERSION FACILITIES, ESTIMATED COST OF ENERGY OR PRODUCT For purposes of comparing the proposed facility with alternatives, as required by 75-20-301(2)(c), MCA, a detailed analysis of the cost of energy or product from the facility must be presented in an application for an energy generation or conversion facility. This requires detail on the capital and operating costs and operational characteristics of the facility.

(Annotation: This rule provides a major basis for the comparison of the proposed facility and alternatives which are not the same size or do not have the same operating characteristics as the proposed facility. This comparison is required for the department's recommendation and the board's finding on minimum impact given the nature and economics of alternatives pursuant to 75-20-301(2)(a), MCA.)

(1) Capital costs as of the date of full operation shall be calculated as the total of the escalated construction costs and compounded interest during construction.

(a) Escalated construction costs shall be calculated as specified in ARM 36.7.2109(6).

(b) Information must be provided about the likely methods of financing the facility. The likely debt equity ratio and projected interest rate for the debt must be submitted. Interest during construction on borrowed funds and accounting allowances for internally generated funds used during construction must be compounded throughout the construction schedule and capitalized in the cumulative facility cost up to the date of full operation.

(i) For service area utilities, the date of full operation means the date the facility is proposed to be placed in service.

(ii) For competitive utilities and nonutility facilities, the date of full operation means the date when debugging and plant shakedown is expected to be complete and the plant is available to produce at design capacity. Expected revenues during the buildup schedule, if significant, should be netted

against operational costs during this period. Other standard methods of treating the buildup schedule may be used if they are fully explained.

(2) Amortization costs must be calculated by standard industry practice for the estimated life of the bonds or other borrowing, or for the economic life of the facility.

(3) Annual costs for the first, fifth and tenth operational year of the facility must be estimated. If current costs are used as a basis, they must be escalated, using an appropriate index or indices of recent cost inflation specified in ARM 36.7.2109(6), to the appropriate year. The same index or other department approved index or indices must be used to escalate operating costs over the life of the facility to calculate the levelized cost of energy from the facility.

(a) Annual costs must be disaggregated by relevant categories, including, but not limited to, amortization, depreciation, taxes, insurance, interim replacements, any other capital-related annual costs, operational labor costs, operational material costs, fuel costs, fuel transportation costs, water, waste disposal costs, maintenance costs and decommissioning costs. Assistance shall be specified. Methods and assumptions used in estimating the costs must be explained.

(4) An application must contain a description of expected operational characteristics of the facility as follows:

(a) gross plant output, expected in-plant use of output, and expected net plant output when operating at full capacity;

(b) expected amount and timing of scheduled partial or total downtime for maintenance, rebuilding, or other purposes;

(c) estimated amount of unscheduled downtime associated with similar facilities, considering type, size, and location, based on historical data, if available, or probablistic failure analyses;

(d) for service area utilities, estimated amount of downtime due to availability of lower cost displacement energy;

(e) expected, or planned, operating levels over the course of the year.

(5) Direct unit costs for the first, fifth and tenth full operational year must be calculated by dividing the appropriate year's costs by the expected annual net output of the facility during full operation.

(6) Levelized direct unit energy costs must be calculated.

(7) First, fifth and tenth year and levelized direct unit costs must be calculated in constant dollars for a specified year, preferably the year of application. The index used to convert nominal to constant dollars must be specified.

(8) Expected net output during full operation shall not exclude output lost during downtime discussed in 4(d).

(9) An application must contain estimates of the accuracy of all costs and operating characteristics.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-215, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Rules 36.7.2111 and 36.7.2112 Reserved

36.7.2113 LINEAR FACILITIES, ESTIMATED ANNUAL COSTS An application for a linear facility must contain a detailed analysis of the annual costs of the facility for purposes of comparing the facility with alternatives, as required by 75-20-301(2)(c), MCA, including detail on the capital and operating costs and operational characteristics of the facility.

(1) All estimated construction costs must be escalated to the appropriate date in the construction schedule as explained in ARM 36.7.2109(6).

(2) An application must contain information about the likely methods of financing construction of the facility. For facilities taking longer than one year to construct, allowance for funds used during construction must be added to the escalated construction costs to calculate the capital costs as of the date the facility is placed in commercial operation.

(3) Amortization costs must be calculated by standard industry practice for the estimated life of the bonds or other borrowing, or for the economic life of the facility.

(4) Costs for the first, fifth and tenth full operational year of the facility must be estimated. If current costs are used as a basis they must be escalated, using an appropriate index or indices of recent cost escalation specified in ARM 36.7.2109(6), to the first full operational year. The same index or other department approved index or indices must be used to escalate operating costs over the life of the facility.

(a) Annual costs must be disaggregated by relevant categories, including, but not limited to, amortization, depreciation, taxes, insurance, interim replacements, any other capital-related annual costs, operational labor costs, operational material costs, pumping costs, water costs, waste disposal costs, and maintenance costs. Assistance shall be specified. All assumptions used in estimating the costs must be explained.

(5) An application must contain a description of design capacity and expected operational characteristics of the facility.

(6) For pipelines, energy transport costs for the first, fifth and tenth full operational year must be calculated by dividing the appropriate year's costs by the expected annual net throughput of the facility during full operation.

(7) For pipelines, levelized energy transport costs must be calculated by dividing levelized annual costs by the expected annual net throughput of the facility during full operation.

(8) First, fifth and tenth year and levelized costs must be calculated in constant dollars for a specified year, preferably the year of application. The index used to convert nominal to constant dollars must be specified.

(9) An application must contain an explanation of the methods, including rules of thumb, used to estimate costs and operating characteristics.

(10) An application must contain estimates of the accuracy of all costs and operating characteristics.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-215, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2114 ALL FACILITIES, SERVICE AREA UTILITIES, COPIES OF CONTRACTS FOR PURCHASE OF MATERIALS OR SALE OF ENERGY FROM THE PROPOSED FACILITY (1) An application must contain copies of any contracts covering periods longer than one year to which the applicant is a party for the purchase of equipment, fuel and/or water for the facility or for the sale of the facility's product or transportation services, or the following information for each such agreement:

(a) a brief description of the obligations of and the benefits to the utility under the agreement;

(b) a list of all parties to the agreement;

(c) the time period during which the agreement is in effect;

(d) the amount to be purchased or sold and the rate and timing of delivery under the agreement; and

(e) the financial agreements.

For confidential treatment of contracts, see ARM 36.7.1502.

(2) If at any time after the date of the application but before receiving a certificate an applicant enters into any such contract, the applicant shall within 30 days supply a copy of the contract or the information required by 1(a)-(e) to the department.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-215, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2115 ALL FACILITIES, PRICING POLICY An application must contain a discussion of how the product or transportation services provided by the facility will be priced or how the costs of the facility will be recovered. Distinction should be made between pricing according to market value, and the use of rolled-in pricing, average cost pricing, or any other cost-based pricing method. This rule does not apply to transmission lines that recover costs through overall energy charges or similar methods.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2116 ALL FACILITIES, EVALUATION OF ECONOMIC COSTS AND BENEFITS To facilitate a comparison of the project and alternatives for the board's finding under 75-20-301(2)(c), MCA, an application must include information on the internal and external costs and benefits of the proposed facility.

(1) For internal costs the information provided under ARM 36.7.2109 and ARM 36.7.2110 or ARM 36.7.2113 is sufficient.

(2) For external costs the information provided under ARM 36.7.2515 and ARM 36.7.2544 or 36.7.2545 is sufficient.

(3) Information on benefits must include, where relevant, benefits to the consumer, benefits to the applicant, and benefits to Montana.

(Annotation: Benefits to the applicant may differ from benefits to the state because each view the project from a different perspective.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Sub-Chapter 22
Application Requirements for Service Area Utilities
Explanation of Need for Generation, Conversion
and Linear Facilities

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36.7.2201 GENERATION AND CONVERSION FACILITIES, EXPLANATION OF NEED An application from a service area utility must explain the basis of need for the proposed facility by documenting the need for the energy to be produced by the facility, including an explanation of the existing resources available to the applicant, future resources for which major permits and regulatory approvals have been granted, the expected growth in energy demands in the applicant's service area, and the role of the proposed facility and other planned resources in serving the load growth. An application must include a discussion of the degree of uncertainty in the timing of the need for the proposed facility, the degree of uncertainty in the likely markets for sale of the output of the proposed facility in the event the facility is placed in service before its output can be used in the applicant's service area, and contingency plans if need in the applicant's service area or markets for outside sales do not develop as expected. An applicant whose special circumstances make part or all of these requirements inappropriate should contact the department to determine special application requirements.

(Annotation: The term "resources" as used in ARM 36.7.2201-36.7.2417 refers to generation or conversion plants and energy conservation.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2202 GENERATION AND CONVERSION FACILITIES, RESOURCE FORECAST (1) An application from a service area utility must contain a resource forecast showing the existing and permitted resources and energy conservation which can be used to serve loads in the applicant's service area for the twenty-year period following the date of application for the proposed facility. Should the twenty year forecast period extend well beyond the scheduled completion date of the facility, the department may approve the applicant's use of a shorter forecast period. The resource forecast must specify the following:

(a) generation or conversion and energy conservation resources;

(b) firm energy and nonfirm energy;

(c) applicant-owned resources, shares of partially owned resources, contracted purchases and sales and other transfers and trades;

(d) planned retirements, downratings and upgradings of existing resources;

(e) an explanation of the methods and assumptions used to evaluate firm resources, including hydroelectric planning criteria and thermal capacity factors; and

(f) reserves for each year.

(2) The resource forecast for service area gas utilities must specify the following:

(a) All owned and purchased gas sources, any transfers or trades, and energy conservation resources;

(b) Any expected declines or increases in production rates; and

(c) Reserves for each year.

(Annotation: Applicants that are both gas and electric utilities only need to provide the information for the part of the company the facility is designed to serve.)

(3) An application must contain an explanation of the methods and assumptions used in making the resource forecast.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2203 GENERATION AND CONVERSION FACILITIES, POOLING, INTERCONNECTION, EXCHANGE, PURCHASE AND SALE AGREEMENTS An application must contain the information specified in ARM 36.7.1604. Material previously submitted to the department may be incorporated by reference, but must be updated as appropriate.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2204 GENERATION AND CONVERSION FACILITIES, DATA REQUIREMENTS FOR ENERGY AND PEAK DEMAND An application from a service area utility must contain demand data for the service area where the energy produced by the proposed facility would be marketed. Should the twenty year forecast period in (1) and (2) extend well beyond the scheduled completion date of the facility, the department may approve the applicant's use of a shorter forecast period.

(1) Historical annual energy and peak demand data must be provided in tabular form for each of the 20 years preceding the year of application. Historical data must be disaggregated by sector of demand as defined in ARM 36.7.1501. Electrical energy data may be provided in either megawatt-hours or average megawatts; peak data must be provided in megawatts. Gas energy data must be provided in billions of cubic feet per year; peak data must be provided in millions of cubic feet per hour.

(2) Forecasts of annual energy demand and annual peak demand must be provided in tabular form for the current year and for each of the 20 years following the date of application.

(a) Forecasts of annual energy demand must be disaggregated by sector of demand.

(b) The methods and assumptions used in making the forecasts and the sensitivity of the forecasts to changes in the key assumptions must be described, and relevant indicators of the statistical validity of the forecast must be provided. All equations and models used in making the forecast must also be provided.

(c) The amount of energy conservation ascribed to the applicant's energy conservation programs (see ARM 36.7.2210) and the amount of price-induced energy conservation embodied in the forecast must be estimated.

(d) The degree of uncertainty in the forecast assumptions must be explicitly indicated by providing a range of forecast scenarios including a most likely forecast and high and low forecasts and probabilities associated with each scenario using alternate sets of assumptions or by other methods agreed to by the department.

(e) The most recent forecast available to the applicant must be provided, based on the most recent data available. The forecast shall be updated, revised and resubmitted to the department promptly as new forecasts are produced after an application is filed.

(3) The projected annual coincidental peak demand must be provided. An estimate of the coincidental peak demand of each sector of demand, based on the most current load study data available at the time the application is filed, must be provided.

(4) The projections required by (2) and (3) must be presented as a function of the price and rate structure of the energy form to be produced as well as other relevant economic and demographic variables, if these variables are significant determinants of the forecast. If these variables are not significant determinants of the forecast, an explanation of the reasons and evidence to that effect must be provided. If data are not reasonably available to estimate these relationships the applicant should consult with the department for alternatives.

(5) A discussion of any regional requirements for energy and capacity reserves relevant to the proposed facility must be provided.

(6) Wholesale electricity suppliers and retail suppliers with wholesale contracts must provide forecasts meeting the requirements of (1) through (5) for those customers with contracts to purchase the output of or shares in the proposed facility.

(a) These forecasts should indicate the amount of each customer's total load to be served by the applicant through the forecast period.

(b) An explanation of the terms of ownership shall be provided.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2205 GENERATION AND CONVERSION FACILITIES, ASSESSMENT OF THE ROLE OF THE PROPOSED FACILITY IN MEETING ENERGY NEEDS An application from a service area utility must contain an assessment of the role of the proposed facility in meeting energy needs during its projected life, including the following:

(1) A description of the criteria used by the applicant in determining that the facility is necessary, and when it is necessary to meet the requirements of its customers or others, and any other analyses prepared by the applicant, by regional planning or coordinating agencies, or by others, that may relate to the need for the proposed facility;

(2) An explanation of all methods and assumptions used to prepare the assessment;

(3) A discussion of how the criteria described in (1) account for uncertainty in forecasts, uncertainty in operating availability, uncertainty in availability of hydroelectric energy, and uncertainty in completion schedules of resources currently planned or under construction;

(4) A discussion of the relationship of the facility to any regional plans, such as the northwest power planning council's "northwest conservation and electric power plan";

(5) The relationship of all facilities, other resources, energy conservation and major energy purchases existing or planned by the applicant for the 20-year period following the date of application, to the proposed facility, and an explanation of why the planned facilities are being built or the planned purchases are being made in the order planned.

(6) Projected annual and monthly load-resource balances for the 20 years following the date of application.

(a) Monthly availability should be specified for each resource.

(b) Maintenance schedules should be indicated.

(Annotation: ARM 36.7.2205 integrates the information developed in the previous three rules with an explanation of how that information plus any planning reliability and decision criteria is used by the applicant to decide the proposed facility is needed.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2206 GENERATION AND CONVERSION FACILITIES, UNCERTAINTY ANALYSIS (1) An application must contain a discussion of the relationship between uncertainty in load growth and in the availability of existing and planned resources, and the schedule for placing the proposed facility in service, including the following:

(a) the date the proposed facility is needed to come into service, under alternate assumptions affecting the rate of growth of loads (see ARM 36.7.2204);

(b) the effect on the date the proposed facility is needed to come into service, of alternate assumptions about the future availability of existing resources and resources for which major regulatory approvals and permits have been granted, resources for which regulatory approval and permits have been applied for but not yet granted, and other generation and energy conservation resources planned or considered by the applicant;

(c) the method that the applicant will use to determine when it is appropriate to begin construction of the proposed facility;

(d) the likely markets for sale of any temporary surplus energy or capacity the applicant may have after the facility is placed in commercial operation;

(e) the estimated price for the sale of the output of the facility to the markets identified in (d) and the range of possible prices and markets and their associated probabilities of occurrence and duration; and

(f) contingency plans, after the start of construction, to slow down or temporarily halt or terminate construction if loads or outside markets do not grow as expected.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2207 ALL FACILITIES, RELIABILITY CRITERIA An application must contain a discussion of the applicant's system reliability including the following:

(1) A description of the existing and desired levels of generation, transmission and distribution reliability;

(2) An explanation of the rationale for the selection of the desired level of reliability;

(3) The planning assumptions and rules used to maintain the desired level of generation and transmission reliability;

(4) The expected frequency of interruption of service to customers under current reliability criteria, and the extent to which that frequency of interruption is associated with outages of generation, transmission, and distribution facilities; and

(5) An economic evaluation of alternate levels of reliability.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2208 GENERATION AND CONVERSION FACILITIES, INTERRUPTIBLE AND CURTAILABLE LOAD DATA An application from a service area utility must identify annual peak and total annual energy for the most recent available year, separated into firm and interruptible peak loads, and firm and curtailable energy loads, including identification of each major interruptible or curtailable load customer or group of customers, the amount of the customer's interruptible or curtailable load, and an explanation of the conditions under which the loads may be interrupted or curtailed.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2209 GENERATION AND CONVERSION FACILITIES, DESTINATION AND DISTRIBUTION PATTERNS OF ENERGY TO BE PRODUCED An application from a service area utility must contain a description of the destination and transmission or transportation patterns of the energy to be produced for each of the first ten years of the proposed facility's operation. This information is required to provide for a comparison of alternatives to and alternative sites for the proposed facility and an evaluation of the extent to which the facility will lead to additional costs based on a need to expand the transmission or transportation system.

(1) For electric generation facilities, an application must contain relevant load flow diagrams for at least the first and fifth years after the facility is expected to become operational. If data sufficient to conduct load flow studies for a 5-year period after the facility is in operation are not available, projected peak load flows must be supplied in an alternative form agreed to in writing by the department. The load flow diagrams must be based on a model of the affected regional transmission system recognized by the interconnected neighboring utilities with which the applicant traditionally or historically cooperates and plans as described in the long-range plan.

(2) For energy generation or conversion facilities other than electric generation facilities, an application must contain a projection of volumes flowing through the affected regional pipeline or other fuel transport system, and where relevant, flow rates in relation to the capacity of the component segments of the transport system. Flow rates and volumes must be projected for a five-year period after the facility is proposed to be placed in service.

(3) An application must contain a discussion of the adequacy of the existing bulk transmission or transportation system to handle projected flows with the facility in operation, and a discussion of the need for any capacity expansion.

(4) For facilities that would serve demands outside Montana, an application must report peak loadings and capacity for each affected segment of the interstate bulk transmission or pipeline system. This information is required to provide for an assessment of the effect on the incremental delivered cost of energy of requirements for additional transmission or transportation capacity.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2210 GENERATION AND CONVERSION FACILITIES, ENERGY CONSERVATION PROGRAMS An application from a service area utility must contain a general explanation of the applicant's efforts over the last 5 years, and current and planned efforts, to promote energy conservation. An application must also evaluate the effect of any state, regional, and national energy conservation programs on future loads in the applicant's service area.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2211 GENERATION AND CONVERSION FACILITIES, CATEGORIES FOR REPORTING CUSTOMER END-USE DATA (1) An application from a service area utility must provide demand data by end use for the most recent year prior to application for the product supplied by the proposed facility. Wholesale suppliers must provide this information for their contract customers. This information is required to provide a data base for the analysis

of energy conservation and renewable energy alternatives in an applicant's service area. An applicant having difficulty obtaining any of this information should contact the department to reach agreement on the information to be provided.

(a) For the residential sector, categories include, at a minimum, building shell characteristics, appliance characteristics, appliance use patterns, and annual home fuel consumption by fuel for all fuels. Data on characteristics of the occupants that may significantly affect energy use must also be supplied.

(Annotation: Examples of characteristics of the occupants that are likely to significantly affect energy use include family size and number of family members who are at home during the day.)

(b) For the commercial and industrial sector, categories include, at a minimum, type and size of business operation, building shell characteristics, appliance and process equipment characteristics, patterns of operation, heating, ventilating, air conditioning system characteristics, and consumption of each type of fuel.

(c) For contract industrial customers, data for each contract customer must include at a minimum, a description of each major process use of the energy form to be produced by the proposed facility, estimates of the amount of the energy form consumed each year in each major process, and the energy use per unit of output of each major process or group of processes.

(d) For the agricultural sector, categories include, at a minimum, number and size of irrigation pumps, types and acreage of crops irrigated, hours of use, source, size of lift, estimation of amount of water applied, and amount of fuel consumed.

(2) The survey instruments, sample methods and sample size must be consistent with the best available methods for end-use studies.

(Annotation: The methods used in energy end-use research are rapidly developing and changing. Because of this, the procedures to be used in studying the different sectors of demand should be selected as close as possible to the time at which the studies actually are to be conducted, to reflect best available methods. Consultation with the department is recommended prior to the end-use study to choose the most appropriate analytical method and survey strategy, given Montana conditions. Consultation with the Northwest Power Planning Council for examples of end-use studies is also recommended. Study procedures for specific sectors of demand also can be obtained from other institutions, such as Lawrence Berkeley Laboratories for the residential sector.)

(3) An application must contain a complete description of the methods used to collect energy end-use data, including the sample size, and, as appropriate, copies of the survey instrument(s).

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2212 ELECTRIC TRANSMISSION LINES, EXPLANATION OF NEED An application for an electric transmission line must contain an explanation of the need for the facility, based on, but not limited to, one or more of the following conditions:

(1) Transient stability considerations under normal or contingent operating conditions;

(Annotation: Transient stability means the ability of a transmission system to return to normal conditions after a momentary short, lightning strike or other fault has been cleared. Normal operating conditions generally means that all transmission lines and associated equipment are available for use. Contingent operating conditions means that one or more transmission lines or other pieces of equipment are not available due to failure or planned or unplanned outage. Transient stability considerations are generally of concern when dealing with high capacity transmission lines such as 230 kv or 500 kv.)

(2) Power transfer capacity under normal or contingent operating conditions;

(Annotation: Power transfer capacity means the amount of power the transmission system is able to deliver to a particular area or between particular points. It depends upon the conductor size, voltage and minimum clearance of the transmission lines, and is generally lower in hot weather than cold weather due to thermal expansion of the conductors and reduced ability to shed heat. It also may depend upon design and operating characteristics of equipment other than the transmission lines, such as transformers, breakers and switches. The power transfer capacity of a transmission line is defined to be its surge impedance loading, thermal rating, or power transfer capability for a specified power factor and voltage drop.)

(3) Voltage drop in the transmission or subtransmission network under normal or contingent operating conditions;

(Annotation: Voltage drop means the deviation between the nominal voltage of a transmission or transformer bus and the actual voltage under given operating and load conditions. Utilities generally have specified criteria for acceptable voltage drop, such as 6 percent or 10 percent. A voltage drop outside acceptable limits may indicate a need for reinforcement such as by construction of additional facilities.)

(4) Reliability of service considerations; and

(Annotation: Reliability of service means the ability of the transmission system to provide adequate service to all loads under various degrees of contingent operating conditions. Reliability is achieved by providing multiple paths for power

flows between generators and loads. It is also provided by engineering design for facilities to withstand stresses in excess of those reasonably to be expected.)

(5) Economy considerations.

(Annotation: Economy considerations mean the purpose of the transmission line is to reduce costs or to promote opportunities for purchase of energy or capacity or sale of surplus energy or capacity at reasonable costs.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2213 ELECTRIC TRANSMISSION LINES, TRANSIENT STABILITY CONSIDERATIONS For electric transmission lines where transient stability considerations are a basis of need, an application must contain the following information:

(1) An explanation of the normal or contingent operating conditions, under which a transient stability problem exists, identification of the criteria used to determine these conditions, and an explanation of the rationale for their use; and

(2) At least two stability studies, one to demonstrate the problem situation and one to demonstrate the solution.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2214 ELECTRIC TRANSMISSION LINES, POWER TRANSFER CAPACITY, VOLTAGE DROP For electric transmission lines where power transfer capacity or voltage drop is a basis of need, the application must contain an explanation of the problem situation including the following information:

(1) Where thermal rating is referenced, identification of both the normal and emergency thermal ratings and an explanation of their effect on power flows;

(2) Where normal transfer capacity of a transmission line is referenced, identification of a standard power factor and voltage drop limit;

(3) Where emergency power transfer capacity under contingent operating conditions is referenced, identification of the voltage drop and power factor acceptable for the period of contingency;

(4) Identification of any applicable design or operating voltage drop standards or legal or contractual voltage drop restrictions;

(5) A minimum of three load flow studies. The load flow studies must clearly indicate any assumptions made, including any relevant input data, and must include a single line diagram showing megawatts and megavar loads and flows and voltage levels for each study. The studies must include the following unless otherwise approved by the department:

(a) the base case, illustrating the problem;

(b) a study showing the immediate effect of the facility; and

(c) a study showing the effect of the facility five years later.

(6) 10-year historical and 10-year projected load growth at each point of distribution in the area that would be served by the facility, including the following:

(a) a description of the assumptions used in making the projection, and an evaluation of the extent to which load growth in the area to be served by the facility will follow or differ for the patterns shown in overall service area load growth of the applicant;

(b) if additional block loads equal to 10 percent or more of a given substation load are anticipated, a list of the total connected load and the after-diversity-maximum demand for each additional load;

(c) for substations which are delivery points for resale customers, the applicant may substitute the resale customer's forecast of load growth at that delivery point for the applicant's own forecast. In such cases an evaluation of the resale customer's forecasting method must be included; and

(d) an explanation of the amount of excess capacity which will be available after the proposed transmission line is built, under contingent and normal conditions, and an estimate of when additional reinforcement will be necessary.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2215 ELECTRIC TRANSMISSION LINES, RELIABILITY OF SERVICE For electric transmission lines where reliability of service is a basis of need, an application must contain the following:

(1) The information required by ARM 36.7.2214(5) and (6);

(2) A description of the planning assumptions and rules by which the applicant attempts to maintain its desired level of generation and transmission reliability, and an explanation of the rationale for the selection of the desired level of reliability. To the extent this information has been provided in ARM 36.7.2207 it need not be duplicated here.

(3) To the extent available 10 years historical line outage data in the area to be served by the proposed facility including the duration, location, and cause of the outage, the load lost, and the number and type of customers affected, if known.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2216 ELECTRIC TRANSMISSION LINES, ECONOMY CONSIDERATIONS For electric transmission lines where economy considerations are a basis of need, an application must contain the following, as relevant:

(1) A system cost study for the ten years following the date the proposed line is to be placed in service, showing system costs with and without the proposed line;

(2) An analysis of markets and prices for surplus energy or of the need for and alternative sources of firm energy to be transmitted over the proposed line;

(3) An analysis of sources and prices for purchased energy to be received over the proposed line;

(4) An analysis of the demand for and price of wheeling services to be provided by the proposed line;

(5) Other economic analysis relevant to demonstrating the need, economic feasibility or financial viability of the proposed line;

(6) A discussion of the relationship of the capacity of the proposed facility to the size of projected flows over the facility; and

(7) If transmission capacity exists that could carry the desired energy or power flows without violating voltage drop, transfer capacity or other transmission planning criteria, a discussion of efforts by the applicant to reach an acceptable agreement with the owners of this transmission capacity to make it available to the applicant at reasonable cost and an explanation of why the proposed facililty is preferable to use of the existing facility.

(Annotation: The information developed for this rule should anticipate the requirements of rule 36.7.3506(8), the need decision standard for transmission lines, based on economy considerations.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2217 OTHER LINEAR FACILITIES, EXPLANATION OF NEED Applicants for other types of linear facilities, such as pipelines, should contact the department for appropriate information requirements for determining need for the facility.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2218 ALL FACILITIES, POOLING, INTERCONNECTION, EXCHANGE, PURCHASE, AND SALE AGREEMENTS An application from an electric utility must contain the information listed in ARM 36.7.1604 and ARM 36.7.1605 that is relevant to the proposed facility.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Sub-Chapter 23
Application Requirements for Competitive Utilities
Explanation of Need for Generation and Conversion Facilities

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36.7.2301 MARKET ANALYSIS An application from a competitive utility must contain an analysis of markets for the primary product of the proposed facility and significant by-products, for 10 years after the expected first year of full operation of the facility. This analysis must include the following:

(1) A description of the market to be served; and

(2) A market demand forecast, derived from engineering and econometric analyses of observed consumption patterns in the proposed market area.

(a) All assumptions and methods used in preparing the forecast must be described in detail.

(b) All statistical analyses leading to the forecast must be provided.

(c) The degree of uncertainty in the forecast assumptions must be explicitly indicated by providing a reasonable range of forecast scenarios using alternate sets of assumptions or by other methods agreed to by the department.

(d) The market demand forecast must be presented as a function of the price of the energy to be produced by the facility and of other economic and demographic variables. If price is not a significant determinant of the forecast, an explanation of the reasons and evidence to that effect must be provided.

(3) The market analysis shall be compared with published U.S. energy forecasts.

(Annotation: Studies done by federal agencies and industry groups such as the American Gas Association, American Petroleum Institute, and Gas Research Institute should be referenced.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2302 MARKETABILITY FORECASTS (1) An application from a competitive utility must contain a forecast of the likely future price of the primary energy form produced by the facility and any significant by-products for at least 10 years from the expected first year of full operation of the facility and a projection of prices for the remainder of the plant life. The forecast shall be based on the forecast of demand required by ARM 36.7.2301 and on a forecast of likely conditions of supply. Assumptions used to project prices beyond the 10-year forecast period must be provided.

(2) Direct unit costs for the first, fifth and tenth years of full operation, and energy production costs over the life of the facility, as calculated in ARM 36.7.2110, must be estimated with and without adjusting for assistance as defined in ARM 36.7.1501(7).

(3) Direct unit costs over the life of the facility must be compared with the expected prices of the energy form estimated in (1) above. The expected date must be specified when the price will become greater than the direct unit costs of production.

(4) A discussion must be provided of likely assistance as defined by ARM 36.7.1501(6). Direct unit costs over the life of the facility, adjusted for likely assistance must be compared with the expected prices.

(5) A discussion of the applicant's contingency plans if such assistance is not available must be provided.

(6) A detailed analysis must be provided which weighs the costs and benefits of the proposed facility to the applicant, to the citizens of Montana, to the citizens of the United States, and to the consumers of the output of the facility.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2303 UNCERTAINTY ANALYSIS An application from a competitive utility must contain a discussion of the uncertainty involved in the analysis of marketability, and price and the risks and benefits associated with alternate outcomes and any contingency plans after the start of construction to slow down, temporarily halt, or terminate construction if markets do not develop as projected.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Sub-Chapter 24
Application Requirements
Evaluation of Alternatives

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36.7.2401 SERVICE AREA UTILITIES, GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVES (1) An application must contain an evaluation of the nature and economics of alternatives to the proposed facility, including alternative energy resources, energy conservation, alternative energy technologies, nonconstruction alternatives, alternative sizes and timing of facilities, the no action alternative, and alternative technological components for the proposed facility. An application must contain a comparison of alternatives leading to selection of the proposed facility as the preferred alternative, and an explanation of the reasons for selection of the proposed facility.

(2) An application must contain an evaluation of each alternative energy resource, energy conservation, or alternative energy technology that can produce or save at least one megawatt or one percent of the output of the proposed facility, whichever is greater. The evaluation must describe each alternative energy resource or energy conservation measure, the location and quantity of the resource available, and the constraints to its availability. Predictable daily and seasonal variations in the availability of an alternative energy resource or energy conservation must also be described. Dispersed resources such as conservation shall be treated collectively as a single alternative, not analyzed one site at a time.

(Annotation: The intent of the one megawatt/one percent rule is to avoid overlooking alternatives which may be geographically dispersed but which collectively may represent significant cost-effective opportunities. At the same time alternatives which can supply as little as one percent of the output of a proposed plant will be less relevant by themselves than in conjunction with other cost-effective resources.)

(a) Alternative energy resources include, but are not limited to, coal, natural gas, liquid hydrocarbons, nuclear, solar, wind, geothermal resources, biomass, and falling water.

(b) Energy conservation includes any measures that reduce the amount of energy required to accomplish a given quantity of work through increases in efficiency of energy use, production or distribution.

(c) Alternative energy technologies include, but are not limited to, alternative combustion technologies, alternative coal conversion technologies, alternative boiler designs, cogeneration and alternative uses of waste heat, alternative wind, hydropower, and geothermal generation technologies, and the direct application of energy resources.

(Annotation: Direct application of energy resources includes the provision of heat and other end-uses through direct use or combustion of an energy resource.)

(3) An application must contain an evaluation of nonconstruction alternatives, including purchase of a share in another planned or existing facility, long-term purchase of

energy or capacity from other utilities or suppliers, and increased use of contractually curtailable customer loads.

(a) For peaking facilities, nonconstruction alternatives include load management and peak load pricing, and increased contractual interruptibility and curtailability of customer loads.

(4) An application must contain an evaluation of alternative size facilities and alternative timing and frequency of construction. The evaluation must include the alternative timing of appropriately sized plants using alternative energy resources and technologies as well as alternative sizing and timing of energy generation or conversion plants of the same type as the proposed facility, including those below the size thresholds in 75-20-104(10), MCA. The evaluation must also include alternative timing of any other energy generation or conversion units planned by the applicant, including those identified in the long-range plan filed with the department under ARM 36.7.1602 or other planning documents of the applicant.

(5) An application must contain an evaluation of the no action alternative, wherein no action would be taken to meet the need or provide the services the proposed facility is designed to meet or provide.

(6) An application must contain an evaluation of alternative technological components and subsystems that could be employed by the proposed facility that could substantially reduce the cost or environmental impacts of the proposed facility, including, but not limited to, air and water pollution control systems, cooling systems, and transmission and distribution systems and those required by ARM 36.7.2514(8) and ARM 36.7.2515(8) and (9).

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2402 SERVICE AREA UTILITIES, GENERATION AND CONVERSION FACILITIES, CRITERIA FOR EVALUATION OF ALTERNATIVES TO THE PROPOSED FACILITY An application must contain an evaluation of relevant alternatives listed in ARM 36.7.2401, leading to a ranking of alternatives and selection of the proposed facility. The evaluation and selection may be made by any method preferred by the applicant.

(1) An application must include a detailed description of the methods and criteria used by the applicant to select the proposed facility given the capacity, availability, and types of alternatives, and to determine the proper size and timing of construction, in order to achieve maximum economies of scale and the applicant's desired level of reliability at the lowest economic cost.

(2) In addition to the applicant's criteria for comparison, all appropriate alternatives which have no insurmountable environmental, technical or other problems serious enough to warrant elimination from further consideration, must be ranked by the levelized delivered cost

of energy, including known mitigation costs. Alternatives whose levelized delivered cost of energy is not more than 35 percent higher than the cost of energy from the proposed facility, or which have significant environmental, planning or operational advantages over the proposed facility, must be compared on the basis of performance, system impact, and environmental impact as follows:

(a) performance criteria include:

(i) the first year and levelized delivered cost of energy, including known mitigation costs, incremental transmission costs and the effect of line losses;

(ii) the estimated on-line life of the alternative and the projected capacity factor during the on-line life of the alternative;

(iii) impact on reserve requirements;

(iv) availability;

(v) planning flexibility and resource commitment;

(vi) operating flexibility; and

(vii) amount of demand that can be provided for by the alternative;

(viii) constraints to implementation;

(b) system impact criteria include:

(i) incremental system cost;

(ii) impact on system reliability;

(iii) impact on system reserve requirements; and

(iv) potential contribution of the alternative to the firming of existing secondary resources; and

(v) impact on need for future expansion of the transmission and distribution system;

(c) environmental impact criteria include:

(i) significant environmental advantages and disadvantages; and

(ii) significant siting constraints.

(Annotation: The applicant may use published information on generic environmental impacts.)

(3) In comparing the no action alternative with the other alternatives, the costs of no action shall include, if relevant, the net losses to consumers who would be deprived of the output of the facility and would have to obtain the energy or product of the facility from other sources.

(4) An explanation must be given of the reasons for dropping any alternative from further consideration at any stage in the evaluation process.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2403 SERVICE AREA UTILITIES, GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVE LOAD-RESOURCE BALANCES (1) An application from a service area utility must contain an evaluation of alternative load-resource balances from the proposed facility and at least the two lowest levelized cost alternatives identified in ARM 36.7.2402.

(a) Alternative load-resource balances shall be constructed by varying the order in which the proposed facility and alternatives, including conservation, are constructed or employed, with additional resources added as necessary to balance loads for the forecast period used in ARM 36.7.2202 and ARM 36.7.2204.

(b) Alternative load-resource balances shall be constructed to reflect load growth uncertainty.

(Annotation: This may be accomplished by constructing separate alternative load-resource balances for each of the load growth scenarios provided in response to ARM 36.7.2204(2)(d). The term "resources" as used in this rule refers to generation or conversion plants or energy conservation.)

(2) The alternative load-resource balances shall be evaluated by calculating the net present value of all costs for each alternative. Expected net present values for each alternative load-resource balance shall be calculated by weighting the alternative load growth scenarios by their associated probabilities, or by other methods agreed to by the department.

(a) The evaluation must account for differences in costs beyond the analysis period, reflecting differences in the remaining useful life of the alternative resources.

(b) The methods and assumptions used in calculating net present value, and the sensitivity of the resulting rankings of expected net present value of all costs to changes in key assumptions must be described, and any relevant indicators of the statistical validity of the rankings must be provided.

(Annotation: As an example, the sensitivity of the net present value ranking to the use of the real discount rates in the range of 3 to 12 percent should be provided.)

(c) A sensitivity analysis must be provided of the effect of alternate size and timing of facilities on the net present value of all costs.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2404 COMPETITIVE UTILITIES AND NONUTILITIES, GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVES (1) An application must contain a discussion of reasonable alternative sources of fuel, alternate fuels and alternative energy technologies to produce the same output as that of the proposed facility and an explanation of the rationale for the selection of the proposed technology. Alternative energy technologies include, but are not limited to, alternative combustion technologies, alternative coal conversion technologies, combustion turbines, alternative boiler designs, cogeneration, and alternative uses of waste heat. Published tradeoff studies, if utilized in the selection process, may be cited by reference.

(2) An application must contain an evaluation of nonconstruction alternatives, including purchase of a share in another planned or existing facility and long-term purchase of energy or capacity from other utilities or suppliers.

(3) An application must contain an evaluation of alternative technological components and subsystems that could be employed by the proposed facility that could substantially reduce the costs or environmental impacts of the proposed facility, including, but not limited to, air and water pollution control systems, cooling systems, and transmission and distribution systems and those required by ARM 36.7.2515(8) and (9). Documentation for process tradeoff studies performed by the applicant must be provided. Published tradeoff studies may be cited by reference. A description of the methods used to select the proposed designs for major process areas must be included.

(4) An application must contain an evaluation of alternate sized facilities of the same type as the proposed facility and alternate timing of such facilities.

(5) An application must contain an evaluation of the no action alternative.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2405 COMPETITIVE UTILITIES AND NONUTILITIES, GENERATION AND CONVERSION FACILITIES, CRITERIA FOR EVALUATION OF ALTERNATIVES TO THE PROPOSED FACILITY (1) The application must contain a detailed description of the methods and criteria used by the applicant to compare alternatives and to select the proposed facility given the capacity, availability and type of alternatives, and to determine the proper size of the facility.

(2) In addition to the applicant's criteria for comparison, all alternatives listed in ARM 36.7.2404 must be compared on the basis of performance and environmental impact.

(a) Performance criteria include:

(i) the first year and levelized delivered cost of energy or product, including incremental transmission or transportation costs calculated with and without assistance;

(ii) the estimated on-line life of the alternative and the projected output levels, availability, and capacity factor during the on-line life of the alternative;

(iii) reliability;

(iv) conversion efficiency;

(v) planning flexibility and resource commitment; and

(vi) constraints to implementation.

(b) Environmental impact criteria include:

(i) significant environmental advantages and disadvantages; and

(ii) significant siting constraints.

(Annotation: The applicant may use published information on generic environmental impacts.)

(3) In comparing the no action alternative with the other alternatives, the costs of no action shall include, if relevant, the net losses to consumers who would be deprived of the output of the facility and would have to obtain the energy or product of the facility from other sources.

(4) An explanation must be given of the reasons for dropping any alternative from further consideration at any stage in the evaluation process.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Rules 36.7.2406 - 36.7.2409 Reserved

36.7.2410 SERVICE AREA UTILITIES, ELECTRIC TRANSMISSION LINES, EVALUATION OF ALTERNATIVES An application must contain an evaluation of the nature and economics of relevant alternatives to the proposed facility, which could in whole or in part address the problem or opportunity as described in ARM 36.7.2212 that the proposed facility is designed to address, including transmission alternatives, alternative energy resources, alternative transmission technologies, alternative levels of reliability and nonconstruction alternatives. The no action alternative must be evaluated. The evaluation must also include a comparison of alternatives leading to the selection of a preferred alternative and an explanation of the reasons for the selection of the proposed facility.

(1) An application for an electric transmission line must include an evaluation of transmission alternatives, including alternative end points and intermediate substation locations for the transmission line and upgrading or replacing an existing facility that would serve to provide the needed reinforcement that would be provided by the proposed facility. An application must also evaluate alternative timing of other electric transmission lines planned by the applicant, including those identified in the long-range plan filed with the department under ARM 36.7.1602 or in other planning documents, which in whole or in part would address the problem situation or opportunity or provide the needed reinforcement that would be provided by the proposed facility. For each transmission alternative, a minimum of three load flow studies must be provided, as required by ARM 36.7.2214(5).

(2) Alternative energy resources and energy conservation alternatives are those that can individually or in combination offset or postpone the need for the proposed facility, or provide services comparable to the proposed facility. The evaluation must include a description of each alternative energy resource or energy conservation measure, the location and quantity available, any constraints to its availability and predictable daily and seasonal variations in the availability of the energy resource, if applicable.

(Annotation: An example is cogeneration in combination with local energy conservation to reduce peak loading on the existing transmission system.)

(3) Alternative transmission technologies are those capable of providing comparable services or addressing the problem or opportunity the proposed facility is designed to address.

(4) An application based on reliability of service considerations must contain an evaluation of alternative levels of transmission reliability, and of the provision of backup generation to customers with particular needs for reliability.

(5) Nonconstruction alternatives include the use of curtailable and interruptible load contracts with customers and load management.

(6) The no action alternative, means no facility would be constructed to meet the need or provide the services the proposed facility is designed to meet or provide.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2411 SERVICE AREA UTILITIES, ELECTRIC TRANSMISSION LINES, CRITERIA FOR EVALUATION OF ALTERNATIVES (1) An application must contain the applicant's evaluation of all relevant alternatives listed in ARM 36.7.2410 leading to a ranking and selection of alternatives and selection of the proposed transmission facility.

(a) An application must include a detailed description of the methods and criteria used by the applicant to select a facility which best addresses the problem or opportunity situations identified as the basis of need (see ARM 36.7.2212) given consideration of economics, engineering, and environmental concerns.

(2) In addition to the applicant's criteria for comparison, an application must include a ranking of all relevant alternatives which have no insurmountable environmental, technical or other problems serious enough to warrant elimination from further consideration, by levelized annual cost, including known mitigation costs. Alternatives whose levelized annual cost is not more than 35 percent higher than the proposed facility or 25 percent higher when the proposed facility is a transmission line 230 kV or higher and at least 30 miles long, or which have significant environmental advantages over the proposed facility, must then be compared based on performance, system impact, and environmental impact as follows:

(a) performance criteria include:

(i) total construction cost and levelized annual cost;

(ii) reliability;

(iii) duration of the solution; length of time before additional reinforcement is needed; and

(iv) constraints to implementation.

(b) system impact criteria include:

(i) for generation alternatives, the need for future expansion of the existing transmission and distribution system;

(ii) total transmission system losses;

(iii) effect, if any, on timing and need for constructing new generating facilities; and

(iv) effect on the ability of the applicant to take advantage of opportunities for economy transactions.

(c) environmental impact criteria include:

(i) significant environmental advantages and disadvantages; and

(ii) significant siting constraints.

(Annotation: The applicant may use published information on generic environmental impacts.)

(3) In comparing the no action alternative with other alternatives, the costs of no action shall include, if relevant, the net losses to consumers who would be deprived of the services of the facility.

(4) A full explanation must be given of the reasons for dropping any alternative from further consideration at any stage in the evaluation process.

(Annotation: The applicant should anticipate the requirements of 36.7.2530(2) which mandate that transmission alternatives identified in 36.7.2410(1) which survive the screen in section (2) of this rule must be included in the alternative siting study.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Rules 36.7.2412 - 36.7.2416 Reserved

36.7.2417 PIPELINE FACILITIES, EVALUATION OF ALTERNATIVES An application for a pipeline facility must contain an evaluation of alternatives, including, but not limited to, the use of alternative transportation modes, alternative starting points if the point of origin is a plant or facility for which a site must be chosen, alternative destination points, alternative diameter pipe, alternative flow rates, alternative rates of pumping or compressing, alternative size, number and location of pump or compressor stations, alternative pump or compressor fuels and fuel sources, alternative pipe wall thickness and alternative pipe material, and the no action alternative. Service area utilities shall also evaluate alternate methods of meeting the need for the energy being transported.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

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36.7.2501 ENERGY GENERATION AND CONVERSION FACILITIES, GENERAL REQUIREMENTS OF THE ALTERNATIVE SITING STUDY An application for an energy generation or conversion facility must contain an alternative siting study and baseline environmental data as specified in ARM 36.7.2501 - ARM 36.7.2517. These requirements apply specifically to fossil-fueled facilities and other facilities that utilize similar transportable energy resources. An alternative siting study and equivalent environmental baseline data is required for all energy generation or conversion facilities defined by 75-20-104(10), MCA. Applicants for energy generation or conversion facilities that employ nontransportable energy resources must consult with the department concerning the alternative siting study and baseline data requirements.

(Annotation: The alternative siting study is required in order to identify a site to accommodate the facility that will minimize adverse environmental impacts and economic costs. Adverse impacts are minimized by: 1) avoiding all exclusion areas; 2) avoiding sensitive areas and areas of concern where possible, or mitigating significant adverse impacts in these areas if avoiding them is not feasible; 3) selecting a preferred site generally exhibiting the characteristics listed in the preferred site criteria; and 4) mitigating significant adverse impacts that would occur as a result of constructing the facility.

The facility should not be sited in sensitive areas or areas of concern unless the applicant can demonstrate that no significant adverse impacts would result, or that mitigation of significant adverse impacts is possible, or that siting the facility in one of these areas would result in less cumulative adverse environmental impact and economic costs, including the costs of mitigation, than siting the facility in an alternative location.

The alternative siting study is conducted within a study area that contains all reasonable sites for the facility (see ARM 36.7.2506) and that is determined by the locations of sources of major inputs to the proposed facility, the destinations of the output of the facility, and as applicable, the location of the applicant's service area.

The first step of the siting study is to define the study area. The next step is an analysis of the delivered cost of energy from the facility, if it were to be located at representative points in the study area, based on the lowest costs of supplying fuel, water and labor, and transmitting or transporting the energy or product of the facility to load or market centers. Based on a composite of these costs, the applicant is required to identify the location in the overall study area that would result in the minimum levelized delivered cost of energy from the facility, and to subsequently identify economically feasible siting areas where the delivered levelized cost of energy from the facility would be no more

than 30 percent higher than the minimum cost location. The remaining steps of the alternative siting study are accomplished by three consecutive levels of analysis: the reconnaissance, the inventory and the baseline study. Cost, engineering considerations, and adverse environmental impacts must be considered at each level of analysis.

The reconnaissance relies upon existing environmental data that the applicant is required to collect in order to determine the locations of exclusion areas and certain sensitive areas and areas of concern. Based on the results of the reconnaissance the applicant is required to select candidate siting areas. These are geographic areas at least 10 miles in radius, except that if only one candidate siting area is identified, at least a 30-mile radius is required. The applicant selects the candidate siting areas by eliminating sensitive areas and areas of concern from consideration where possible, and by consideration of the preferred site criteria listed in ARM 36.7.2502, engineering concerns, refinements of the analysis of delivered cost of energy from the facility, and other factors important to the applicant.

The inventory is conducted following the reconnaissance and requires the collection of information about locations of additional sensitive areas and areas of concern, certain land cover characteristics, land uses, and other information within the candidate siting areas. Based on this information and consideration of baseline sensitive areas and areas of concern, the applicant is required to select at least three alternative sites that would be the most suitable for locating the proposed facility. "Site" is defined as the area of land acquired by the applicant to construct the facility and non-linear associated facilities (see ARM 36.7.1501(60)). If the levelized delivered cost of energy from a candidate siting area would be no more than ten percent higher than the cost of energy from a facility constructed at the minimum cost location (see ARM 36.7.2530(1)), an alternative site located in that candidate siting area must be chosen for study.

The baseline study is concerned with only the alternative sites, one of which is the preferred site. Baseline data, a detailed assessment of the impacts the facility would have on the environment if it were constructed at each of the alternative sites, and identification of plans or measures to mitigate the adverse environmental impacts is required. The data is collected within impact zones (see ARM 36.7.1501(34)) which surround the sites. The size of the impact zones vary according to the type of resource being studied, and the size is specified in each section of ARM 36.7.2515. A comparison of the alternative sites based on this information, refinements of cost and engineering considerations (see ARM 36.7.2516) and an explanation of the significant reasons for selection of the preferred site (see ARM 36.7.2517) completes the siting study.

The methods used to collect and evaluate the required information, and the judgements applied in selecting economically feasible siting areas, candidate siting areas, alternative sites and the preferred site are left to the applicant's discretion. However, the application must explicitly identify and explain all methods, judgements and considerations that influenced the applicant's analyses and decision process at each successive step of the siting study.)

(1) The alternative siting study for an energy generation or conversion facility must include:

(a) delineation of the study area (see ARM 36.7.2506);

(b) analysis of delivered cost of energy in the study area (see ARM 36.7.2507);

(c) identification of economically feasible siting areas (see ARM 36.7.2508);

(d) a reconnaissance of the study area (see ARM 36.7.2509);

(e) selection of candidate siting areas (see ARM 36.7.2510);

(f) an inventory of the candidate siting areas (see ARM 36.7.2511 and ARM 36.7.2512);

(g) selection of alternative sites (see ARM 36.7.2513);

(h) a baseline study of alternative sites, including baseline data collection and impact assessment (see ARM 36.7.2514 and ARM 36.7.2515);

(i) a comparison of alternative sites (see ARM 36.7.2516) and

(j) selection of the preferred site (see ARM 36.7.2517).

(2) An application must contain the information required by ARM 36.7.2530(3) for the following new linear facilities or upgrades of existing linear facilities that are proposed in association with each of the alternative sites, unless the applicant can demonstrate that less detailed information meets these requirements, based on considerations of voltage, capacity, or length of the associated facilities, the homogeneity of the geographic area that would be crossed by these facilities or that impacts are not likely to occur.

(Annotation: The alternative siting study requirements address a comprehensive range of siting concerns and environmental impacts. Determinations concerning the applicability or relevance of the requirements to a particular proposed facility are dependent on the size and design of the proposed facility, and the characteristics and complexity of the geographic area(s) where the facility may be located. The applicant should consult with the department well in advance of preparing an application for guidance in making these determinations, and in order to ensure that the application is limited to information necessary and useful for evaluating each proposed facility. The consultation process regarding application contents is described in ARM 36.7.2104.)

(a) Associated facilities that transport major volumes of materials, including fuel and water required by the facility to produce energy or other primary products.

(b) Associated facilities that transmit or transport the energy or primary products of a facility to load centers or to a point of interconnection with a transmission or transportation system.

(3) An application must contain a summary of the results of consultation with appropriate government agencies to identify their concerns about the proposed facility's possible locations or effects on the environment, and the way the applicant considered these concerns in identifying preferred and alternative sites for the facility.

(Annotation: The government agencies to be consulted are generally specified within annotations to the appropriate rule.)

(4) An application may contain any valid and useful existing studies, reports, or data prepared on the energy generation or conversion facility and may be submitted by the applicant towards fulfilling the requirements of ARM 36.7.2501 - ARM 36.7.2517 but shall be subject to supplementation and shall be used by the department only to the extent it considers them applicable.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2502 ENERGY GENERATION AND CONVERSION FACILITIES, PREFERRED SITE CRITERIA Preferred site(s) conform to the criteria listed in 75-20-301(2)(i) and 304(3)(a), MCA and achieve the best balance among the following by being located:

(1) In areas where transportation requirements will be compatible with other human activities;

(2) Where new associated linear transmission or transportation facilities are as short as possible and conform to the preferred route criteria listed in ARM 36.7.2531;

(3) Where there is probable general community acceptance and cooperative participation in the siting of the facility;

(4) Where there will be a net positive effect on the economy of local communities;

(5) In areas with adequate public and private services to meet the demands created by construction and operation of the facility;

(6) In geologically stable areas in flat or gently rolling terrain;

(7) Where opportunities exist for energy conservation or use of by-products, including waste heat;

(8) In areas which meet the criteria for class II waste disposal areas listed in ARM 16.14.505;

(9) Where a water supply is obtainable from existing or planned industrial water storage;

(10) In areas where atmospheric conditions and topography are favorable for dispersion of airborne pollutants; and

(11) In accordance with applicable local, state, or federal management plans where public lands are concerned.

(Annotation: Section 75-20-301(2)(i), MCA states "that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503." Section 75-20-304(3)(a), MCA, concerns the waiver of certain alternative siting study requirements when a facility is proposed to be located in a county where permanent jobs have been lost. The applicant should consider the preferred site criteria at each level of analysis required by the siting study.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2503 ENERGY GENERATION AND CONVERSION FACILITIES, EXCLUSION AREAS The following exclusion areas within the study area shall be eliminated from further consideration for siting the facility unless the legislative or administrative unit of government with direct authority over the area gives the applicant permission to locate the facility there. Information concerning the locations of exclusion areas is required by the reconnaissance and is considered throughout the alternative siting study.

(1) National wilderness areas.

(Annotation: Consult USDA Forest Service (USFS) and Bureau of Land Management (BLM) for data. Areas under study for wilderness designation are treated in ARM 36.7.2504.)

(2) National primitive areas.

(Annotation: Consult USFS and BLM for data.)

(3) National parks.

(Annotation: Consult National Park Service (NPS) for data.)

(4) Rivers in the national wild and scenic river system.

(Annotation: Consult NPS for data.)

(5) National wildlife refuges and ranges.

(Annotation: Consult U.S. Fish and Wildlife Service (USFWS).)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2504 ENERGY GENERATION AND CONVERSION FACILITIES, SENSITIVE AREAS Facilities should not be sited in sensitive areas unless the applicant can demonstrate that no significant adverse impacts would result, or that mitigation of significant adverse impacts is possible, or that siting the facility in a sensitive area would result in less cumulative adverse

environmental impact and economic costs, including the costs of reasonable mitigation, than siting the facility in an alternative location. Requirements for information concerning the locations of sensitive areas are divided among the reconnaissance, the inventory, and the baseline levels of the siting study. Any sensitive areas initially identified by either the reconnaissance or the inventory shall be considered throughout the remainder of the alternative siting study, in the selection of alternative sites, and in the assessment of impacts required by the baseline study if any of these areas are within the impact zone of an alternative site.

(Annotation: The boundaries of sensitive areas are generally delineated on published maps or are defined by existing data in agency files or other sources. The annotations accompanying each sensitive area indicate where the applicant can obtain existing data, or where advice and guidance can be obtained if field work is necessary.)

(1) For the reconnaissance, the sensitive areas are as follows:

(a) state game ranges and game management areas;

(Annotation: Consult Montana Department of Fish, Wildlife and Parks (MDFWP).)

(b) state parks and national and state monuments;

(Annotation: Contact NPS and MDFWP for data.)

(c) national and state recreation areas;

(Annotation: Contact NPS and MDFWP for data.)

(d) rivers under active study for inclusion in the national wild and scenic river system;

(Annotation: Contact NPS, BLM, and USFS for data.)

(e) roadless areas of 5,000 acres or greater in size, managed by federal or state agencies to retain their roadless character;

(Annotation: Contact BLM, USFS, MDFWP, and Montana Department of State Lands (MDSL) for data.)

(f) areas designated class I under prevention of significant deterioration provisions of the clean air act of Montana or areas under active consideration for such designation;

(Annotation: Consult Montana Department of Health and Environmental Sciences (MDHES).)

(g) areas designated as "non-attainment" under the clean air act of Montana;

(Annotation: Consult MDHES.)

(h) designated critical habitat for state or federally listed threatened or endangered species; and

(Annotation: Consult USFWS and MDFWP for locations.)

(i) national historic landmarks, and national register historic districts and sites.

(Annotation: The State Historic Preservation Office (SHPO) can provide information and recommendations for additional contacts with appropriate federal land management agencies and tribal authorities. Also consult National Registry of Historic Landmarks.)

(2) For the inventory, the sensitive areas are as follows:

(a) land areas covered by conservation easements where the presence of the facility would be incompatible with a management plan established by a local, state or federal agency;

(Annotation: Consult Nature Conservancy, Montana Land Reliance, local government planning agencies, USFWS, MDSL, BLM, and USFS.)

(b) public and private airports and airfields and any controlled airspace associated with them, and other air traffic hazard areas identified by the Montana aeronautics division and the federal aviation administration;

(Annotation: Consult the Aeronautics Division of the Montana Department of Commerce and the Federal Aviation Administration.)

(c) unique habitats and natural areas designated by the national park service, the USDA forest service, the bureau of land management, or the state of Montana as national natural landmarks, natural areas, research natural areas, areas of critical environmental concern, special interest areas, research botanical areas, and outstanding natural areas;

(Annotation: Consult NPS, MDFWP, BLM, USFS, and MDSL for data.)

(d) national register historic districts and sites nominated to or designated by SHPO (state historic preservation office);

(Annotation: Consult SHPO.)

(e) national trails;

(Annotation: Consult NPS or see 16 USC 1242-1245.)

(f) municipal watersheds;

(Annotation: Consult MDHES.)

(g) designated one hundred year floodplains;

(Annotation: Consult MDRNC, Water Resources Division, floodway maps.)

(h) military installations, including, but not limited to, military bases, command centers, missile silos, and radar towers;

(Annotation: Consult appropriate U.S. Defense Department agencies.)

(i) agricultural experiment stations; and

(Annotation: Consult Montana State University (MSU).)

(j) streams and rivers designated class I and II by the Montana department of fish, wildlife and parks.

(3) For the baseline study, the sensitive areas are as follows:

(a) habitats occupied at least seasonally by resident state or federally listed threatened and endangered species;

(Annotation: Consult MDFWP and USFWS.)

(b) viewsheds of scenic overlooks and scenic highways; and

(c) state or federal waterfowl production areas.

(Annotation: Consult MDFWP and USFWS.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2505 ENERGY GENERATION AND CONVERSION FACILITIES, AREAS OF CONCERN Facilities should not be sited in areas of concern unless the applicant can demonstrate that no significant adverse impacts would result, or that mitigation of significant adverse impacts is possible, or that siting the facility in an area of concern would result in less cumulative adverse environmental impact and economic costs, including the costs of reasonable mitigation, than siting the facility in an alternative location. Requirements for information about the locations of areas of concern are divided among the reconnaissance, the inventory and the baseline levels of the siting study. Any areas of concern initially identified by either the reconnaissance or the inventory shall be considered throughout the remainder of the alternative siting study, in the selection of alternative sites, and in the assessment of impacts required by the baseline study if any of these areas is within the impact zone of an alternative site.

(1) For the reconnaissance, the areas of concern are as follows:

(a) specially managed buffer areas surrounding exclusion areas;

(Annotation: Consult NPS, USFS and BLM for data.)

(b) active faults showing evidence of post-miocene movement; and

(Annotation: Refer to Witkind 1977, "Major active faults and seismicity in and near the Big Fork-Avon area, Missoula-Kalispell region, Northwestern Montana." USGS Miscellaneous Field Studies Map MF-923. Sources of data are U.S. Geological Survey (USGS), Montana Bureau of Mines and Geology (MBMG), University of Montana (UM), MSU.)

(c) mountain valleys subject to a high frequency of atmospheric conditions conducive to poor dispersion of air pollutants

(Annotation: Consult MDHES.)

(2) For the inventory, the areas of concern are as follows:

(a) areas of rugged topography defined as areas with slopes greater than 15 percent;

(Annotation: This data can be derived from USGS topographic maps or obtained from digital data on file with USGS.)

(b) the winter distribution of elk, deer, and pronghorn and areas where they concentrate during severe winters as designated by the Montana department of fish, wildlife, and parks, bureau of land management, or USDA forest service;

(Annotation: These areas should be mapped at a scale of 1:250,000 and are designated by MDFWP. Location maps are on file at the MDFWP Research Laboratory, MSU; additional areas may be designated by USFS and/or BLM.)

(c) major elk summer security areas which are any forested areas greater than 1/2 mile in minimum radius, more than 1/2 mile from an existing road, and designated by the Montana department of fish, wildlife and parks, bureau of land management, or USDA forest service as elk summer range;

(Annotation: Consult MDFWP, USFS and BLM for data and USFS, BLM, and county road maps supplemented with air photos which show recent road development.)

(d) habitats occupied at least seasonally by mountain sheep as designated by the Montana department of fish, wildlife and parks;

(Annotation: This area should be mapped at a scale of 1:250,000. Consult MDFWP for data.)

(e) any undeveloped land or water areas that contain known natural features of unusual scientific, or educational significance, and any undeveloped land or water areas that contain known natural features of unusual recreational significance that have public access provided;

(Annotation: Consult NPS, MDFWP, BLM, USFS, MDSL and Nature Conservancy for data in addition to the applicant's field work.)

(f) areas with geologic units or formations that show a high probability of including significant paleontological resources;

(Annotation: Consult the Museum of the Rockies, MSU.)

(g) sites with evidence of contemporary use that have religious or heritage significance and value to Indians as defined by ARM 36.7.2512(8);

(h) proposed national natural landmarks under active study; and

(Annotation: Consult NPS.)

(i) areas where the presence of the facility would be incompatible with published visual management plans adopted by federal, state, or local governments.

(Annotation: These areas are identified in formally adopted land use plans and have specific management objectives which indicate the areas would be visually incompatible with a proposed facility. Contact USFS, BLM and local governments for data.)

(3) For the baseline study, the areas of concern are as follows:

(a) individual residences located outside of incorporated cities and towns;

(Annotation: The applicant must generate this information.)

(b) major public buildings, including schools;

(Annotation: The applicant must generate this information.)

(c) one hundred year flood plains defined as areas of land adjacent to a stream channel with a one percent or less probability of being flooded in any given year;

(Annotation: This information must be generated by the applicant.)

(d) riparian forests defined as a stand of mature cottonwood or mixed cottonwood-conifer forests greater than 100 meters long and 10 meters wide where average canopy height is 50 feet or more and average density of mature trees is greater than 20 stems per acre that occurs along a waterway;

(Annotation: Consult ASCS and SCS aerial photographs, supplemented by field investigations.)

(e) nesting colonies, defined as five or more pairs within 40 acres, of white pelicans, great blue herons, double-crested cormorants, gulls, or terns;

(Annotation: Consult the USFWS, BLM, USFS, MDFWP for data.)

(f) sage grouse and sharp-tailed grouse breeding areas, the winter distribution of sage grouse and sharp-tailed grouse, and areas where they concentrate during severe winters as designated by the Montana department of fish, wildlife and parks; and

(Annotation: These areas should be mapped at a scale of 1:250,000. Consult MDFWP for data.)

(g) habitats occupied at least seasonally and critical to species listed as "species of special interest or concern" by the Montana department of fish, wildlife and parks and the US fish and wildlife service.

(Annotation: Consult MDFWP for data in addition to field investigations by the applicant.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2506 ENERGY GENERATION AND CONVERSION FACILITIES, DELINEATION OF THE STUDY AREA (1) An application must identify the study area and its boundaries. The study area must contain the locations of sources of major inputs to the proposed facility and the destinations of the output of the facility, including the following:

(a) for service area utility applicants with a service area outside Montana, the applicant's entire service area, the entire state of Montana, and any areas between Montana and the service area where the facility could be constructed with a reasonable likelihood that the levelized annual delivered cost of the energy to the load or market centers to be served would be no more than 30 percent greater than the least cost location where the facility could be constructed or where significant environmental advantages such as those listed in ARM 36.7.2502 justify additional costs;

(Annotation: Load or market areas are general geographic areas where the output of the facility will be used. They may be well defined urban areas that are major centers of electrical

load, diffuse rural areas in the case of a rural electric cooperative or a broad marketing territory in the case of a competitive utility or nonutility.)

(b) for service area utility applicants with a service area located wholly in Montana, the applicant's entire service area and any additional areas inside or outside Montana where the facility could be constructed with a reasonable likelihood that the levelized annual delivered cost of the energy to the load or market centers to be served would be no more than 30 percent greater than the least cost location where the facility could be constructed or where significant environmental advantages such as those listed in ARM 36.7.2502 justify additional costs;

(c) for competitive utilities and nonutilities, all major load or market areas to be served by the proposed facility;

(d) reasonable alternative sources of coal for the proposed facility:

(i) the reasonableness of an alternative coal source is based on the comparative costs of mining, transportation, treatment and compliance with existing regulations; and

(Annotation: For example, a coal source would not be considered a reasonable alternative if it cannot be economically mined assuming a mine-mouth location for the proposed facility. Similarly, a coal source may be a reasonable alternative only for a mine-mouth facility location, but based on the cost calculations required by ARM 36.7.2507, the coal source may not be satisfactory for non-mine mouth facility locations.)

(ii) the reasonableness of an alternative coal source cannot be determined solely on the basis of ownership.

(e) reasonable alternative sources of water for the proposed facility:

(i) reasonable water sources are determined based on availability and the cost of acquisition, transportation treatment and compliance with existing regulations;

(Annotation: For example, groundwater may not be a reasonable alternative for a given facility location if high pumping costs and extensive treatment would be required.)

(f) existing bulk transmission or transportation segments where there is available capacity to accommodate the output of the proposed facility, either directly or by displacement in order to serve the load or market areas listed in (a)-(c).

(Annotation: Transmission by displacement occurs when the amount of electricity transmission to a load area can be reduced, for example, due to locating a generating facility in or near that load area, and thereby making the electricity that was being transmitted available to some other load area.)

(2) An application must contain a map of the study area depicting the locations listed in (1).

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2507 ENERGY GENERATION AND CONVERSION FACILITIES, ANALYSIS OF DELIVERED COST OF ENERGY IN THE STUDY AREA (1) An application must contain estimates of the following costs and graphical representations of these costs, depicted by selected iso-cost lines, a cellular-based format, or other methods approved in writing by the department.

(a) The estimated costs of supplying coal to the proposed facility located at representative points in the study area, from the lowest cost coal source for such points.

(Annotation: The lowest cost coal source minimizes the present value of coal acquisition and shipping costs, the capital costs of coal, ash, and sludge handling facilities and pollution control facilities, and the present value of operating and maintenance costs for these facilities.)

(b) The estimated costs of providing cooling water to the proposed facility located at representative points in the study area, from the lowest cost water source for such points.

(Annotation: The lowest cost water source minimizes the present value of the costs of acquiring, transporting, and treating the water, including the capital costs of pipelines, pump stations, pumps, wells and treatment facilities, and the costs of operating and maintaining these facilities.)

(c) The estimated costs of constructing, operating and maintaining the proposed facility at representative points in the study area, based on the differences, if any, in labor costs associated with distances to population centers, any differences in facility design required to comply with air quality requirements, and any other differences in facility design associated with different locations for the proposed facility.

(d) The estimated costs of transmitting or transporting the energy or product of the proposed facility from representative points in the study area to the load or market areas described in ARM 36.7.2506 (1)(a), (b), or (c), including the costs of construction of any necessary transmission or transportation links and the present value of any line losses and wheeling costs, through the minimum cost transmission arrangements associated with representative points in the study area.

(Annotation: Minimum cost transmission arrangements include the costs of upgrading existing facilities as well as construction of new facilities.)

(e) Any other appropriate cost categories as determined by the applicant.

(2) An application must contain a composite of the delivered levelized cost of energy from the facility located at representative points in the study area, based on the costs required by (1)(a)-(e).

(3) An application must contain a description of the cost analysis, the methods and assumptions used to develop the information required by (1) and (2), and a discussion of the accuracy of the cost estimates.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2508 ENERGY GENERATION AND CONVERSION FACILITIES, IDENTIFICATION OF ECONOMICALLY FEASIBLE SITING AREAS (1) Based on the cost calculations required by ARM 36.7.2507, the applicant must identify, on the map required by ARM 36.7.2506(2), the location where the facility could be constructed at the minimum delivered levelized cost of energy in the study area.

(2) The applicant must specify the cost associated with the location specified in (1).

(3) The applicant must identify economically feasible siting areas on the map required by ARM 36.7.2506(2). Economically feasible siting areas are defined by cost contours or cells that indicate the areas where the delivered levelized cost of energy from the facility would be no more than 30 percent higher than the minimum cost location identified by (1) or areas that have significant environmental advantages such as those listed in ARM 36.7.2502 that justify additional costs.

(Annotation: The intent of the 30 percent cost-cutoff is to limit the portion of the study area for which further studies are required, but to retain an area large enough that differences in environmental characteristics can be considered in the selection of candidate siting areas and alternative sites.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2509 ENERGY GENERATION AND CONVERSION FACILITIES, RECONNAISSANCE An application must contain a reconnaissance of the study area prescribed by ARM 36.7.2506 to select candidate siting areas that are generally suitable for siting the facility.

(1) For the portion of the study area located in Montana, an application must contain a base map with the study area delineated on USGS topographic maps at a scale of 1:250,000.

(2) The reconnaissance must include overlays to the base map required by (1) of the exclusion areas listed in ARM 36.7.2503, the sensitive areas listed in ARM 36.7.2504(1) and the areas of concern listed in ARM 36.7.2505(1) that occur in the portion of the study area located in Montana.

(3) For the portion of the study area located outside Montana where economically feasible siting areas were

identified by ARM 36.7.2508(3), the applicant shall consider exclusion areas equivalent to those listed in ARM 36.7.2503, sensitive areas equivalent to those listed in ARM 36.7.2504(1), and areas of concern equivalent to those listed in ARM 36.7.2505(1).

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2510 ENERGY GENERATION AND CONVERSION FACILITIES, SELECTION OF CANDIDATE SITING AREAS (1) The applicant shall select at least three geographically distinct candidate siting areas of at least 10 miles in minimum radius with boundaries that lie within an economically feasible siting area identified in ARM 36.7.2508(3) or shall select one candidate siting area of at least 30 miles in minimum radius with boundaries that lie within an economically feasible siting area identified in ARM 36.7.2508(3), based on consideration of the following:

(a) exclusion areas, sensitive areas, and areas of concern identified pursuant to ARM 36.7.2509(2) and (3);

(b) the preferred site criteria listed in ARM 36.7.2502

(c) refinements of the cost estimates required by ARM 36.7.2507 based on the information provided pursuant to ARM 36.7.2509(2) and/or (3) and any factors that influence the cost of the facility, including the costs of the following:

(i) coal and water delivery systems, including rail spurs, pipelines, reservoirs, wells, conveyor and conduit systems;

(ii) energy or product delivery systems, including transmission or transportation facilities;

(iii) pollution control systems and other mitigation measures; and

(iv) other associated facilities or facility components.

(d) engineering concerns; and

(e) other factors important to the applicant.

(2) The applicant shall delineate the boundaries of the candidate siting areas with lines on the base map required by ARM 36.7.2509 that are accurate to within 0.5 mile (0.80 km). For portions of the study area located outside Montana, any candidate siting areas shall be delineated on the map required by ARM 36.7.2506.

(3) An application must contain an explanation of the methods used to select the candidate siting areas, an explanation of how the considerations listed in (1) were incorporated, and a discussion of the rationale behind selecting the areas.

(4) If any portion of an economically feasible siting area is located outside Montana, the applicant shall select at least one candidate siting area outside Montana. An applicant choosing candidate siting areas outside Montana must select at least two candidate siting areas within Montana.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2511 ENERGY GENERATION AND CONVERSION FACILITIES, INVENTORY, GENERAL REQUIREMENTS (1) An application must contain an inventory of the candidate siting areas identified in ARM 36.7.2510 to select alternative sites suitable for siting the facility.

(2) An application must contain base maps of the candidate siting areas. The base maps shall provide coverage at a scale of 1:62,500 or 1:24,000 of the geographic area within the candidate siting areas. The applicant shall provide one mylar copy of each base map to the department. USGS 15 or 7.5 minute topographic maps, enlarged or reduced to the appropriate scale if necessary, shall be used to create the base maps, insofar as possible. Where such topographic coverage is not available, USGS advance or final 7.5 minute orthophoto quads or the best available published maps with a scale of 1:125,000 or 1:100,000, enlarged to the appropriate scale if necessary, shall be used.

(3) The sensitive areas listed in ARM 36.7.2504(1) and (2), the areas of concern listed in ARM 36.7.2505(1) and (2), and the environmental information required by ARM 36.7.2512 shall be delineated on the minimum number of overlays to the base maps of the candidate siting areas. The overlays shall clearly portray the required information. The applicant shall organize and present the required information on overlays according to the categories listed in ARM 36.7.2516(3)(c)-(e) and (h)-(m) to the extent it is practical. Within each category, uniform map scales must be used. The applicant shall submit one mylar copy of each overlay to the department. Where a map scale other than 1:62,500 is specified, the applicant may submit the information at the alternative scale, enlarged as specified in (2). All overlays shall clearly show section lines or corners and township and range locations.

(4) For candidate siting areas selected pursuant to ARM 36.7.2510 that are located outside Montana, the applicant shall consider sensitive areas equivalent to those listed in ARM 36.7.2504(1) and (2) and areas of concern equivalent to those listed in ARM 36.7.2505(1) and (2).

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2512 ENERGY GENERATION AND CONVERSION FACILITIES, INVENTORY, ENVIRONMENTAL INFORMATION An application must contain the following environmental information for the geographic area within each candidate siting area.

(1) An application must contain one or more overlays depicting the location of the following land use and land cover categories. A minimum map resolution of 20 acres is required unless otherwise specified in any individual category below. Linear features required by (e), (f), and (g) and boundaries of any other land cover or land use categories shall be accurately mapped to within one-tenth mile. The applicant may combine information on an overlay provided that mapped categories are clearly distinguishable. All overlays shall clearly show section lines or corners and township and range locations.

(a) Cities, towns, and unincorporated communities, and residential clusters of 5 or more dwelling units per 20 acres.

(Annotation: Consult most recent U.S. Census, local government officials, USGS orthophoto quads, aerial photos, and supplement as necessary with other maps and field investigations.)

(b) Designated residential growth areas.

(Annotation: Consult county land use plans.)

(c) The developed areas adjoining city and town boundaries.

(Annotation: Consult county land use plans.)

(d) Industrial and commercial areas located outside of cities, towns and unincorporated communities.

(Annotation: Examples of industrial areas include manufacturing establishments, major warehouses, and establishments where heavy equipment and machines are operated on a continuing basis. Examples of commercial areas include feedlots and retail and wholesale trade and service establishments. Consult ASCS photos, and local government officials.)

(e) Existing federal and state highways and designated and existing county roads.

(Annotation: Consult USGS 7.5' or 15' quads and county land use plans.)

(f) Railroads and railroad right-of-way.

(Annotation: Consult USGS 7.5' or 15' quads.)

(g) Electric transmission lines of 161 kilovolts (kV) or greater voltage design.

(Annotation: Consult USGS 7.5' or 15' quads and utility system maps.)

(h) Nontimbered rangeland.

(Annotation: Consult ASCS photos.)

(i) Dry cropland.

(Annotation: Consult ASCS photos.)

(j) Prime and unique farmland.

(Annotation: Consult SCS, counties with existing soil surveys and/or surveys in progress. Prime and unique farmland is

classified according to physical properties rather than land use.)

(k) Mechanically irrigated land and other irrigated land.

(Annotation: Consult ASCS photos, county conservation districts, and SCS.)

(l) Irrigation canals carrying at least 50 cfs of water.

(Annotation: Consult USGS 7.5' quads and DNRC water right records, field offices of the DNRC Water Rights Bureau, and the U.S. Bureau of Reclamation (BOR).)

(m) Permitted surface mining areas.

(Annotation: Consult MDSL.)

(n) Forested lands.

(Annotation: Consult USGS 7.5' or 15' quads.)

(o) Standing water bodies, including any lake, wetland marsh or reservoir, and intermittent water bodies and internally drained basins that reach a surface area of 10 acres or more at least one year out of ten.

(Annotation: Consult MDFWP for data, use USGS 7.5' topographic maps and ortho photos, and supplement with field work, if necessary.)

(2) An application must contain an overlay showing the following land ownership categories:

(a) public land, by management agency; and

(Annotation: Consult BLM national resource lands in Montana maps, and USFS, forest visitors maps.)

(b) tribal and Indian reservation land.

(Annotation: Consult tribal offices and Bureau of Indian Affairs (BIA) for data.)

(3) An application must contain an overlay depicting the following slope categories at a minimum map resolution of 20 acres and contour intervals of 80 feet or less, unless different categories are approved in writing by the department:

(a) 0≥5 percent;

(b) 5≥15 percent;

(c) greater than 15 percent

(Annotation: Refer to USGS 7.5' and 15' topographic maps.)

(4) An application must contain an overlay showing the following areas that are 20 acres or greater in size, active

mass movement areas that clearly exhibit downslope movement of soil or rock material, including earth flows, landslides, active soil creep and solifluction; and slopes with conditions conducive to instability, but where past failure is not apparent.

(Annotation: Attributes of potentially unstable slopes include: geologic similarity to areas that have failed or are failing now, steep slope angle, north aspect (generally), high soil moisture conditions, active creep and solifluction. Data on these conditions must be generated by the applicant.)

(5) An application must contain an estimate of the population in each population center identified on the overlay(s) required by (1)(a).

(6) An application must contain a narrative description of existing social characteristics and characteristics of the local economy of the communities within the candidate siting areas and within a reasonable commuting distance of each candidate siting area. Projected future social and economic conditions should the facility not be built must also be discussed. The following information is required in the description:

(a) the relationship of current land uses to economic and social activities in the area;

(Annotation: The narrative description should reference the maps required by section (1), as appropriate. Consult local government officials, U.S. Census, and Montana Department of Labor and Industry (MDLI) and Montana Department of Commerce (MDC) publications.)

(b) existing federal, state and local government land use plans and other local legal restrictions affecting land uses;

(Annotation: Consult USFS, BLM, Bureau of Reclamation, MDFWP, and local government officials.)

(c) population and demographic characteristics;

(Annotation: Consult U.S. Census.)

(d) social structures, values and lifestyles that may be affected by the construction and operation of the facility and identification of any sub-groups that may be differentially affected by the project;

(Annotation: This requirement concerning social structures, values and lifestyles refers to a general characterization of beliefs, attitudes and behaviors resulting from the economic, social and cultural interrelationships of persons residing in the areas under study. These data must be generated by the applicant.)

(e) the local economy, income characteristics, labor force participation characteristics, the availability of skilled and semi-skilled labor, prevailing wage levels, and employment and unemployment rates;

(Annotation: Consult U.S. Census, local government officials, and MDLI and MDC publications.)

(f) the availability, adequacy, capacity and cost of public services, including roads, education, health, social, public safety, and sanitary services;

(Annotation: Consult local government officials.)

(g) fiscal characteristics of local governments and school districts, including descriptions of revenue and expenditures; and

(Annotation: Consult local government officials.)

(h) the availability, adequacy, capacity and cost of private services, including housing, health and retail and wholesale goods and services.

(Annotation: Consult U.S. Census; the applicant must generate some of these data.)

(7) An application must characterize the nature and magnitude of public concerns about the facility based on contacts with representative groups of persons residing in the candidate siting areas and areas potentially affected by population increases resulting from construction and operation of the facility, and/or comments received at any scoping and other public meetings the applicant may hold, and comments from local service providers and public officials. The application must also identify alternatives to the proposed facility suggested by the public and must identify man-made and natural environmental features the public feels would be affected by the facility.

(8) An application must contain an overview of the history and prehistory of the candidate siting areas, including the following:

(a) documentation that a file search has been conducted to identify the types of potentially significant historical, archaeological, architectural, and paleontological resource sites likely to be encountered in the candidate siting areas and a statement indicating the amount of previous survey work conducted in the candidate siting area;

(Annotation: Consultation with SHPO can provide some necessary file search information as well as recommendations to the applicant concerning any additional contacts that should be made pursuant to the American Indian Religious Freedom Act, the Archaeological Resources Protection Act, the National Historic

Preservation Act, the Montana Antiquities Act, and other relevant laws protecting historical, archaeological, architectural and paleontological resources.)

(b) a summary of the nature of the existing historical, archaeological, or paleontological data base and identification of any inadequacies such as a lack of previous survey work in the candidate siting areas that could complicate efforts to fully define all significant classes of sites or properties and to anticipate their occurrence;

(c) identification of sites likely to be encountered in the candidate siting areas and an assessment of the potential for sites to yield information of significant value to historic and prehistoric research; and

(d) a map at a scale of 1:125,000 indicating the location and the extent of previous survey work, based on the results of (a) and including a legend showing level of intensity, the reference date of survey, the sponsor, resultant report, the type of resource and the boundaries of each site, when available.

(Annotation: Adherence to the guidelines for BLM class I inventory studies - manual 6410 - is recommended. Procedures and salient objectives for compiling existing cultural resource data are outlined in these guidelines.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2513 ENERGY GENERATION AND CONVERSION FACILITIES, SELECTION OF ALTERNATIVE SITES (1) The applicant shall select at least three alternative sites for baseline study based on consideration of the following:

(a) exclusion areas, sensitive areas, and areas of concern identified by ARM 36.7.2503, ARM 36.7.2504(1), (2), and (3), and ARM 36.7.2505(1), (2) and (3);

(Annotation: Map overlays of the baseline sensitive areas and areas of concern, ARM 36.7.2504(3) and 36.7.2505(3) respectively, are not required until the baseline study, ARM 36.7.2514. The applicant should, however, anticipate this requirement in selecting alternative sites.)

(b) the preferred site criteria listed in ARM 36.7.2502;

(c) the information required by ARM 36.7.2512;

(d) cost;

(e) engineering criteria; and

(f) other factors important to the applicant.

(2) The applicant shall select for study at least one alternative site from each candidate siting area where the facility could be constructed with a levelized delivered cost of energy that is no more than ten percent higher than the minimum cost location based on the refined cost estimates required by ARM 36.7.2510(1)(c). At least two alternative sites shall be located within Montana.

(3) An application must contain an explanation of the methods used to select the alternative sites, an explanation of how the considerations listed in (1) were incorporated, and a discussion of the rationale for selecting the alternative sites.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2514 ENERGY GENERATION AND CONVERSION FACILITIES, BASELINE STUDY, GENERAL REQUIREMENTS (1) An application must contain a baseline study of at least three alternative sites and their impact zones to gather baseline data describing the existing environment, to assess impacts associated with the proposed facility, to identify mitigation strategies, and to select the preferred site.

(2) The applicant shall depict each alternative site, and the locations of all on-site and off-site associated facilities, as appropriate, using symbols or lines approximately one-half millimeter or less in width drawn on a 1:24,000 topographic base map. The applicant shall provide one mylar copy of this base map to the department. For any areas where 1:24,000 topographic base maps are not available, USGS maps preliminary to the published 7.5 minute quadrangle maps shall be used, or where these are not available, USGS advance or final 7.5 minute orthophoto quads shall be used. Where none of these are available, USGS 15 minute topographic maps or the best available published maps with a scale of 1:125,000 or 100,000, enlarged to 1:24,000 if necessary, shall be used.

(3) An application must contain one set of 1:4800 topographic maps showing the locations, as applicable, of the generators, emission control devices, condensers, shift conversion facilities, reactors, stacks, catalyst production and regeneration facilities, cooling towers, water storage ponds, waste disposal ponds, roads, parking areas, railroad spurs, substations, pumping stations, on-site pipelines, coal storage facilities, any other structures or buildings, nonlinear associated facilities, and any existing structures for each alternative site, noting structures that would be relocated or destroyed.

(Annotation: Locations of the facility components listed above must be delineated in sufficient detail to permit the MDHES to make the determinations required by 75-20-216(3), MCA. (See the annotation following ARM 36.7.2101 for a complete list of MDHES requirements.) Requirements for linear associated facilities are addressed by ARM 36.7.2501(2).)

(4) An application must contain an overlay or overlays, as appropriate, to the base map required by (2) of the baseline data required by ARM 36.7.2515 that can be mapped, the exclusion areas listed in ARM 36.7.2503, the sensitive areas listed in ARM 36.7.2504(1),(2), and (3), and the areas of concern listed in ARM 36.7.2505(1),(2) and (3) that are within the impact zones associated with each alternative site. The

applicant shall organize the information according to the categories listed in ARM 36.7.2516(3)(c)-(e) and (h)-(m) and shall present the information on the minimum number of overlays to the base map. The applicant shall provide one mylar copy of each overlay to the department. All overlays shall clearly show section lines or corners and township and range locations.

(Annotation: Impact zones are defined in ARM 36.7.1501(34) as the study area associated with each alternative site where data is to be collected in order to make determinations concerning impacts from construction, operation, maintenance or decommissioning of a facility. The boundaries of impact zones are specified in ARM 36.7.2515 for applicable categories of baseline data requirements.)

(5) An application must contain one set of black and white contact prints at a scale of 1:48,000 or 1:24,000 that provide complete aerial stereo coverage of the alternative sites, the geographic area within a five mile radius of each alternative site, and the proposed locations of associated facilities. These photos shall be taken during a season of full foliage no more than three years prior to filing the application unless otherwise approved by the department. An application must contain advance or final USGS 7.5 minute orthophoto quads, where available, for the impact zones or portions of impact zones that are not covered by the aerial photos. However, this requirement does not apply to the impact zones associated with assessment of social and economic impacts required pursuant to ARM 36.7.2515(3)(b), (4) and (5).

(6) For each alternative site, or for the proposed site for any facility for which a waiver has been obtained pursuant to 75-20-304(3), MCA, the applicant must certify in the application that purchase options or access for purposes of conducting the studies required by these rules have been obtained.

(7) An application must contain, for each alternative site, information required by the department of health and board of health to determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction pursuant to 75-20-216(3), MCA.

(8) An application must identify and discuss mitigation to reduce or eliminate significant adverse impacts of the facility at each alternative site, including, but not limited to:

(a) alternative pollution control strategies, equipment and/or facilities;

(b) alternative strategies, equipment and/or facilities for reducing water consumption;

(c) alternative locations of associated facilities; and

(d) plans to reduce adverse impacts on local communities, including, but not limited to, plans for meeting the service needs of the work force and maintaining the existing quality of services.

(Annotation: Mitigation of significant adverse impacts must be achieved to the satisfaction of the board in accordance with ARM 36.7.3504 and 36.7.3505.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2515 ENERGY GENERATION AND CONVERSION FACILITIES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT An application must contain baseline data and an assessment of the projected short and long-term changes and impacts that would result from construction, operation and maintenance of the facility and associated facilities for each alternative site and the impact zones whose boundaries are specified in the following sections, unless different impact zone boundaries are approved in writing by the department. The applicant must identify general and site-specific mitigation measures to reduce or eliminate these impacts. This information shall serve as a basis for evaluating and comparing alternative sites as required by ARM 36.7.2516 and selecting a preferred site as required by ARM 36.7.2517. Baseline data that require mapping shall be presented on the minimum number of overlays to the base map required by ARM 36.7.2514(2) that will clearly portray the information.

(Annotation: The following sections are presented in a sequence that generally parallels the order of topics set forth in 75-20-503, MCA.)

(1) An application must contain an overlay depicting the land use information required by ARM 36.7.2512(1) and the following information for an impact zone that includes the area within 5 miles of each alternative site:

(Annotation: Consult most recent U.S. Census, local government officials, USGS orthophoto quads, aerial photos, and supplement as necessary with other maps and field investigations.)

(a) platted subdivisions and land areas designated by local school boards for future school development;

(Annotation: Consult county officials.)

(b) communication facilities, including television and radio towers, microwave facilities, and law enforcement and emergency network facilities;

(Annotation: Consult Federal Communications Commission, television, radio, railroad and telephone service providers, and the Montana Highway Patrol.)

(c) beehives and apiaries; and

(i) Locations of beehives, apiaries, and leaf-cutter bee boards for the field season prior to submitting the application must also be identified within the vegetation impact zones defined by (14); and

(d) residential dwelling units occupied in the year prior to the application being submitted.

(2) An application must contain a description of the anticipated construction crew for the proposed facility by size, skill, and wage levels, the variation in size as it relates to the construction schedule, and any significant variations in these factors among the alternative sites. These data must also be provided for the permanent work force, except that variations in size, if any, shall be described as they relate to the operation and maintenance schedule.

(3) An application must contain an assessment of land use impacts of the facility on agricultural, residential, commercial, industrial, mining, and public land uses based on the information required by (1). An application must specify land uses for which there are no significant differences in impacts among the alternative sites. The assessment of land use impacts must address the following:

(a) for an impact zone that includes the area within a 5-mile radius of each alternative site, the compatibility of the facility with existing land use activities, potential changes in or interference with existing uses of land, and potential inhibiting or preclusive effects on potential future uses of land;

(b) for an impact zone that includes the area within approximately 50 miles of each alternative site, unless the applicant shows that potential land use impacts would be confined to a smaller area, the land use changes expected to result from project-induced population growth and economic development; an analysis of the nature of land use changes expected to result from project construction and operation; probable locations of land use changes; the nature and amount of existing land uses that could reasonably be expected to be displaced; and land use conflicts likely to result from such changes. This assessment must include a description of any measures the applicant proposes to reduce adverse effects on existing land use activities;

(Annotation: Consult local government officials, and local government comprehensive plans and capital improvement program documents. An area somewhat larger or smaller than a 50-mile radius for each alternative site may be appropriate depending on the relative density and distribution of population. The applicant should consult with the department according to ARM 36.7.2104 if there is a problem in determining the appropriate size.)

(c) for an impact zone that includes the area within approximately 50 miles of each alternative site, impacts on agricultural activities resulting from facility-related population and economic growth and changes in air and water quality, changes in agricultural land productivity and operational characteristics, and profitability of livestock, crop and apiarian operations in the impact area. The requirements listed in (7), (13), (14), (17), and (22)-(25) that refer to cropland and to water used for agricultural purposes shall satisfy appropriate parts of this requirement; and

(d) for an impact zone that includes any areas where coal trains would significantly increase rail traffic in residential areas and at road crossings, an application must contain an assessment of safety hazards, noise impacts, and interference with public travel.

(4) An application must contain a detailed qualitative and quantitative assessment of social impacts and impacts of the facility on the economy, public and private services, and the fiscal affairs of local governments and school districts for an impact zone that encompasses the area within approximately a 50-mile radius of each alternative site. At a minimum, the assessment must expand upon and refine information required by ARM 36.7.2512(6). An application must specify any economic, social, public or private services or fiscal characteristics for which there are no significant differences in impacts among the alternative sites. An application must describe the social and economic impacts, if any, on persons involved in agricultural operations and the impacts of changes in agriculture on the overall social and economic characteristics of the impact zone.

(5) An application must contain an assessment of public attitudes and concerns about the potential impacts of the facility that is based on representative views of persons residing within approximately a 50-mile radius of each alternative site. The assessment must also include summaries of correspondence and summaries of personal interviews, if they are conducted, and other information the applicant has collected that records the comments and concerns public officials, local residents and other individuals and groups have raised about the facility. Summaries of issues and concerns identified at public meetings the applicant may hold or the results of any surveys the applicant may conduct must also be included. The applicant must conduct at least one public meeting that is accessible to the residents of the impact zone. The assessment must address the following:

(a) concerns about social, socioeconomic, and land use changes the facility could cause;

(b) concerns about natural environmental features that may be adversely affected by the facility;

(c) issues relating to the facility that may divide communities, cause individual resentment and frustration, and result in public debate; and

(d) issues relating to the facility of particular concern to landowners and residents of the area within 5 miles of each alternative site.

(Annotation: Also see the annotation following (3)(b) above.)

(6) An application must contain the following earth resource baseline data:

(a) an overlay showing where ground disturbance would occur if the facility were constructed at each alternative site; and

(b) for an impact zone that includes the area within one mile of each alternative site, a detailed geologic map at a

scale of 1:4800 and cross sections sufficient to show geologic formations and features potentially affected by seismic activity.

(Annotation: Consult UM, MBMG, USGS, MSU, supplemented by field investigations by the applicant. This information should be combined with the information required by ARM 36.7.2515(24)(b).)

(7) An application must contain an assessment of potential impacts of the facility and associated facilities on earth resources for each alternative site. The impact assessment must address soil erosion and sedimentation for all areas that would be disturbed by construction activities, including those outside the alternative site boundaries. Mass movement must be addressed for the areas where the facility and associated facilities would be located. Alterations of soil characteristics that could reduce productivity or fertility, including compaction or mixing of soil horizons and reclamation, must be addressed for any disturbed areas that would be reclaimed. Reclamation of waste disposal sites must also be addressed. For areas of seismic risk, the assessment applies to an impact zone that includes the area within one mile of each alternative site. Only construction activities that would occur in floodplains are subject to the requirements of (e) below.

(Annotation: As appropriate the applicant may cross-reference information provided for the preferred site pursuant to ARM 36.7.3001 and 36.7.3002 and information concerning alterations of soil chemical properties provided pursuant to ARM 36.7.2515(14)(g) that address the requirements of this subsection.)

(a) An overlay depicting wind and water erosion risk and a discussion of the potential impacts considering soil characteristics, slope, predicted amount of disturbance and climatic conditions.

(Annotation: This information must be developed by the applicant. Consult SCS, BLM, USGS, USFS, MBMG, UM, and MSU.)

(b) An overlay and discussion of mass movement potential, including consideration of existing mass movement areas, bedrock geology and soils, slope aspect, vegetation, and groundwater conditions.

(Annotation: This information must be developed by the applicant. Consult USGS, BLM, SCS, UM, MSU, and MBMG.)

(c) A detailed assessment of seismic risk and a description of the probable behavior of the substrate and surficial materials during an earthquake measuring 5.0 or more on the Richter scale, including any mass movement, differential soil compaction, settling or liquifaction. The assessment should include the following:

(i) a description of any recorded earthquakes that may have affected an alternative site, including the date of occurrence, the magnitude and highest intensity, and a description of the epicenter location or region of highest intensity; and

(ii) an estimate of local intensity of the greatest probable seismic event that may affect each alternative site and an estimate of the probable magnitude and duration of vertical and horizontal acceleration and other probable ground motions likely to occur.

(Annotation: Consult MBMG and National Oceanic and Atmospheric Administration.)

(d) A reclamation and revegetation plan including a discussion of any constraints. Reclamation includes any site restoration, such as recontouring, reducing compaction, restoration of segregated topsoils, installation of soil erosion control structures and successful establishment of vegetative cover in areas disturbed by facility construction, including waste disposal sites. Constraints to reclamation include any physiographic or geologic feature or physical property of soil that hinders or prohibits reclamation.

(Annotation: This information must be developed by the applicant. Consult BLM, USFS, SCS, MDSL, MBMG, UM, and MSU.)

(e) For any construction activities that would occur in 100-year floodplains, a description of the potential for damage to the facility or associated facilities from construction in the floodplain, and an assessment of the potential for adverse impacts to the environment resulting from construction, operation and maintenance of the facility and associated facilities in the floodplain.

(Annotation: Consult MDNRC, Water Resources Division, and FEMA (flood insurance rate map).)

(8) An application must contain data concerning the proposed, and if applicable, alternative fuel sources for the facility, and an analysis of the differences in fuel sources among the alternative sites, if any, including the following:

(a) a chemical and radiological content analysis, including a discussion of comparative differences;

(b) costs and types of pollution control facilities and strategies that would be required;

(c) the amount and relative toxicity of waste products that would be produced;

(Annotation: Data on toxicity of waste products to humans, animals and plants should be obtained through a survey of current literature including laboratory and field results.)

(d) the amount and type of fuel handling facilities that would be required and the area of land required for storage;

(e) heat content and consumption rate; and
(f) difficulty of acquisition, including lease, purchase, and/or transportation arrangements.

(Annotation: Information provided pursuant to ARM 36.7.2506 and 36.7.2507 concerning alternative coal sources may be referenced as appropriate.)

(9) An application must contain the following data relating to the design of the facility for each alternative site:
(a) possibilities and difficulties of disposal of process water, solid or hazardous wastes, and any legal restrictions that would increase the difficulty and cost of compliance with air and water quality standards;
(b) a description of advantages or disadvantages relative to opportunities for using existing transmission or transportation capacity to transport inputs to or outputs from the proposed facility and to accommodate additional facilities; and

(Annotation: Information provided pursuant to ARM 36.7.2209, 36.7.2402(2)(b), and 36.7.2507 may be referenced as appropriate.)

(c) A description of opportunities for using waste heat or providing other useful by-products from the facility.

(Annotation: Appropriate information contained in ARM 36.7.2401-36.7.2411 and ARM 36.7.2515(8) may be cross-referenced as appropriate.)

(10) An application must contain visual resource and viewer sensitivity data for each alternative site from any recreation area, residential area, national register or national register eligible site identified by ARM 36.7.2503, ARM 36.7.2504 and ARM 36.7.2505. For an impact zone that includes the area from which the facility would be clearly visible, not to exceed 30 miles from the proposed facility, the following information is required:
(a) identification and an overlay of key observation points and a description of criteria used to select these points; where one or more of the areas referenced above are in close proximity and would afford similar views of the proposed facility, a representative observation point may be designated;

(Annotation: This information must be developed by the applicant. A key observation point is defined as one of a series of representative locations that collectively provide the full range of viewer and impact zone characteristics.)

(b) a description and evaluation of viewer characteristics, including proximity to the facility, orientation, estimated number of viewers, and duration of view; where a characteristic does not warrant differentiation, an application shall contain an explanation of the reasons;

(c) a description and evaluation of the compatibility of the proposed facility with the viewed area of the landscape;

(d) a description and categorization of levels of sensitivity (the relative degree of viewer interest in the visual resource);

(e) a description and evaluation of the opportunities for and effectiveness of available topographic screening;

(f) photographs taken from selected observation point(s) toward the alternative sites, showing in profile or outline form the visible portion of the proposed facility. The photographs must show the full range of study area visual characteristics and must be accompanied by or cross-referenced to appropriate data provided for (c), (d) and (e); and

(g) a description of the methods used to categorize and describe the impact risk to potential viewers, as required by (a)-(f).

(11) An application must contain a general assessment of the dispersion patterns of the visible portion of the plume from the proposed facility for an impact zone that includes the area within approximately a 30-mile radius of each alternative site, including, to the extent practicable, a description of relative opacity and the potential occurrence of reduced visibility conditions.

(Annotation: The impact zone of 30 miles is approximate and should be reduced or expanded depending on terrain and location of special use areas such as recreation areas or historic sites which may be especially sensitive to plume visibility impacts. The state of the art of plume visibility analysis is not well developed. Therefore, judgements concerning the appropriate level of analysis and method of assessing these impacts are left to the applicant's discretion. The applicant is encouraged to consult with MDHES Air Quality Bureau regarding guidelines on air quality models and other recent documents issued by the Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency.)

(12) An application must contain an assessment of the potential types and levels of visual resource impacts for each alternative site, including, to the extent practicable, plume visibility impacts, based on integration of the information required by ARM 36.7.2515(10) and (11).

(Annotation: The information required by ARM 36.7.2515(3),(5),(19) and (21) may include visual impacts of the facility. The applicant should be cognizant of the overlap between land use, social, cultural, recreation, and visual impacts, and include cross-references in an application where appropriate in order to avoid repetition of material.)

(13) An application must address the deposition patterns or concentrations of the following emissions from the facility for each alternative site as follows:

(Annotation: The following data are required to predict and compare impacts of air pollutants on agriculture and natural vegetation.)

(a) a description of measures proposed to control entry of dust into the atmosphere;

(b) an overlay showing isopleths of cooling tower salt deposition in pounds per acre per year that includes the following concentrations: greater than 30, 10, 3 and 1 pound(s) per acre per year;

(c) a map at a scale of 1:250,000 of the geographical area within 50 miles of each alternative site, with the following overlays:

(i) locations of the predicted maximum one-hour, three-hour, 24-hour, growing season (April-August), and annual concentrations of sulfur dioxide, with the predicted value clearly indicated for each location;

(ii) isopleths of the maximum one-hour average sulfur dioxide concentration, showing at least five intervals between the highest and lowest concentrations predicted for the study area, with all land areas in the highest 10th percentile clearly indicated by shading;

(iii) isopleths of the maximum three-hour average sulfur dioxide concentration, showing at least five intervals between the highest and lowest concentrations predicted for the study area, with all land areas in the highest 10th percentile clearly indicated by shading;

(iv) isopleths of the maximum 24-hour average sulfur dioxide concentration, showing at least five intervals between the highest and lowest concentrations predicted for the study area, with all land areas in the highest 10th percentile clearly indicated by shading;

(v) isopleths of the maximum growing season (April-August) average sulfur dioxide concentration, showing at least five intervals between the highest and lowest concentrations predicted for the study area, with all land areas in the highest 10th percentile indicated by shading;

(vi) isopleths of the maximum annual average sulfur dioxide concentration, showing at least five intervals between the highest and lowest concentrations predicted for the study area, with all land areas in the highest 10th percentile clearly indicated by shading; and

(vii) as appropriate, the maximum annual concentrations and five isopleths spaced at equal concentration intervals in between the maximum and minimum concentrations for cobalt, total suspended particulates, volatile organic compounds, lead, asbestos, nitrogen oxides, beryllium, mercury, vinyl chloride, fluoride, sulfuric acid mist, hydrogen sulfide, and total reduced sulfur, if any of these pollutants will be emitted from the proposed facility in a significant amount as defined by ARM 16.8.921(30)(a).

(14) An application must contain the following baseline data concerning cropping patterns and natural vegetation for each alternative site and an impact zone that includes the water intake, storage and/or discharge points and structures,

and a one-mile buffer zone surrounding these associated facilities, areas receiving cooling tower salt deposition greater than 10 lbs/acre/yr, areas receiving the highest 10th percentile of one-hour, three-hour, 24-hour, growing season and annual sulfur dioxide concentrations and any other pollutants as depicted on the overlays required by (13), and areas within a one-mile radius of high one-hour, three-hour, 24-hour, growing season and annual sulfur dioxide or other pollutant deposition. To avoid delays in preparing an application that may arise from the sequential analysis required by (13) and (14), an application may contain baseline vegetation data collected from areas that existing meteorological or other data suggests will contain the impact zone defined in this section, provided that the applicant submits all additional information necessary to fully comply with the requirements of this section within six months of filing its application.

(Annotation: Portions of the impact zone defined in this section include areas where important impacts to vegetation from air pollutants would be most likely to occur. Areas of highest air pollution concentrations may be geographically separated; therefore the impact zone may be non-contiguous. The isopleth maps required by ARM 36.7.2515(13) which, in part, define the vegetation impact zone, are based on air monitoring and modeling studies that ideally need to be completed before baseline data collection for vegetation begins. Due to the potential scheduling problems that these sequential studies can cause, the applicant may choose to initiate baseline data collection for vegetation before completion of the isopleth overlays for an impact zone larger than is specified above. Existing meteorological or other data may be employed to define this area. Data collection within this larger area would be necessary in order to ensure a reasonable likelihood that the impact zone specified above would be included in the baseline study. If the area that is studied prior to completing isopleth overlays fails to include all of the impact zone as defined in this section, the applicant must gather and submit the additional data that is necessary to complete the application within six months of filing.)

(a) an overlay of natural vegetation and land cover, delineating community types based upon one or two dominant species and one or two understory species. The minimum resolution of any mapping category shall be 10 acres. For each vegetation and land cover category, the following information is required:

(Annotation: See ARM 36.7.2515(15) concerning wildlife-related baseline data requirements.)

(i) locations of sampling plots or transects;
(ii) 35 mm oblique color transparencies of a representative stand of each category;
(iii) identification of dominant species, and subdominant species, if present, estimated canopy coverage classes, and

canopy cover of the dominant and, if applicable, the subdominant species;

(Annotation: Consult Daubenmire (Northwest Science, 33: 43-64, 1959) for canopy coverage classes.)

(iv) a list of plant species encountered within each category;

(v) the percent coverage of bare ground, litter, and lichens;

(vi) an estimate of site productivity using such measurements as soil characteristics, yield capability classes, or net primary production. Production estimates must be based on the peak of the growing season, and must indicate the animal unit months (AUM's) that the type is supporting and the AUM's that the community type could sustain;

(Annotation: This information can be based on existing literature and need not be determined by actual field measurements.)

(vii) for forested areas, an estimate of tree density, basal area and average crown height;

(viii) an indication of successional stage, trend, and factors presently influencing natural vegetative production, including disease and lack of moisture;

(ix) environmental factors, including slope, aspect, soil type, grazing pressure, fire history, condition and trend, including an explanation of relationships between vegetation types and soil types;

(Annotation: Relevant data required by ARM 36.7.2515(7) may be cross-referenced as appropriate.)

(b) on the overlay required by (a) the distribution of ponderosa pine and any other plant species of comparable or greater sensitivity to sulfur dioxide;

(c) on the overlay required by (a) the distribution of old growth forests that have never been harvested and that contain at least 10 percent canopy coverage of conifers greater than 5 dm at breast height;

(d) documentation concerning the presence, distribution, and abundance of plant species listed as threatened or endangered;

(Annotation: Consult the Montana Rare Plant Project, University of Montana Department of Botany.)

(e) for cultivated areas, baseline data concerning the variety of crops, farming practices, trend data including increases and decreases in the acreage devoted to certain crops, and typical harvest rates in bushels per acre and pounds per acre.

(Annotation: These data should be cross-referenced as appropriate to the land use map and impact assessment requirements in ARM 36.7.2515(1), (3) and (4).)

(f) the types and distribution of ornamentals including windbreaks, Christmas tree farms, and commercial greenhouses; and

(g) discussion of soil characteristics, including ph, ion exchange capacity, base saturation, soil nutrient deficiencies or excesses, and/or selenium problems.

(Annotation: These data should be cross-referenced as appropriate to ARM 36.7.2515(7).)

(15) An application must contain the following baseline data concerning terrestrial wildlife for each alternative site, within a three-mile impact zone around each alternative site, and within the vegetation impact zone defined by (14):

(Annotation: Data may be collected by seasonal sampling of representative habitats along fixed observation routes. At least one field inventory during each of the following four time periods - January 1 - February 15, April, June, and September 1 - October 30 - is recommended.)

(a) a list of vertebrate species that have been documented to occur in the impact zones and estimates of their abundance:

(Annotation: This information may be obtained by a combination of field work conducted by the applicant and references to previous studies.)

(b) a list of species that are listed as threatened, endangered, or species of special interest or concern to wildlife management agencies and have been documented in the impact zones or whose geographic ranges overlap the impact zones;

(c) for the species listed in (b) above, baseline data on seasonal distribution, habitat requirements and characteristics, and estimated abundance;

(d) for species whose distribution patterns are not homogeneous throughout the impact zones, an overlay showing seasonal distribution patterns, migration routes, and critical or special use sites;

(e) waterfowl production areas owned or managed by state or federal wildlife agencies and areas with high waterfowl population densities including prime waterfowl habitat as designated by the Montana department of fish, wildlife and parks and any areas identified by the Montana department of fish, wildlife and parks or the US fish and wildlife service as waterfowl concentration areas; and

(Annotation: Consult MDFWP and USFWS.)

(f) a description of any existing conditions that stress wildlife populations or limit abundance, including harassment, disease, weather, fires, development, hunting or poaching pressure.

(16) An application must contain the following baseline data concerning aquatic life and habitats for each alternative site and an impact zone that includes lakes, rivers, and streams, and a representative sample of ponds, springs, wetlands, or marshes located within the vegetation impact zone defined by (14) and any water habitats within one mile upstream and fifteen miles downstream of water withdrawal or discharge points, and within five miles downstream of construction activities. Any overlays required by this section must be cross-referenced, as appropriate, to the surface water overlay required by (22):

(a) a list of aquatic vertebrates of documented or suspected occurrence, including references to the sources of information;

(b) a list of species listed as threatened or endangered, or species of special interest or concern to wildlife management agencies;

(Annotation: This list should be prepared in consultation with MDNRC, USFWS, and MDFWP following preparation of the list required by (a).)

(c) for the species required by (b), a description and overlays, as appropriate, including the following:

(i) relative abundance, including where possible, estimates of population size, distribution, and growth rates;

(ii) spatial and temporal distribution;

(iii) movements, resident or migratory;

(iv) distribution of special use sites, including spawning or rearing areas, by season;

(v) any existing conditions that limit abundance, including pollution, irrigation runoff, withdrawals or dewatering effects, upstream flow regulation or depletion, barriers to movement, and/or overharvest;

(vi) habitat requirements, including minimum flow requirements and suitability of habitats within the impact zone;

(vii) food requirements and preferred sources;

(viii) distribution and abundances of life stages that may be susceptible or fatally affected by project-related disturbances.

(Annotation: This information may be based upon a literature review.)

(d) for waters in the impact zone, as applicable, a description of seasonal fishing use and harvest and a discussion of the economic importance of the fishery resource;

(e) a description of abiotic habitat characteristics of all waters in the impact zone, including water quality, water

quantity, seasonal variation, thermal stratification characteristics of lakes and reservoirs, bottom characteristics, and for running waters, a flow duration hydrograph;

(Annotation: Information provided pursuant to ARM 36.7.2515(22) may be cross-referenced as appropriate.)

(f) a description of biotic characteristics of waters in the impact zone, including the following:

(i) type, extent, and condition of riparian vegetation;

(ii) typical macroinvertebrate communities, including species composition and relative abundance;

(iii) aquatic and semi-aquatic macroflora; and

(iv) periphyton, neuston, and plankton if any.

(17) An application must contain an assessment of the potential impacts to biological resources for each of the alternative sites, including wildlife, fisheries and vegetation in the impact zones as defined by (14), (15) and (16). The assessment must include:

(Annotation: The assessment of impacts on crops in (f) below should be cross-referenced as appropriate to ARM 36.7.2515(3)(c).)

(a) a list of species and/or habitats of greatest susceptibility to project-related disturbances, including fisheries, wildlife and vegetation concerns identified by the applicant and appropriate managing agencies, and an explanation of the rationale and assumptions used to generate the list;

(b) an evaluation of the anticipated impacts to each species or habitat listed in (a), including a description of biological impacts that would occur in the sensitive areas or areas of concern listed in ARM 36.7.2504(1)(a)-(e), (h), (2)(c), (i), and (j), (3)(a) and (c), and ARM 36.7.2505(1)(a), (2)(b)-(e), and (3)(d)-(g);

(c) identification of areas, in consultation with the Montana department of fish, wildlife and parks, where hunting or fishing pressure is likely to increase significantly as a result of the project, and a description of any impacts to game species or any changes in hunting or fishing regulations that might result from the increase in hunting pressure;

(d) identification of areas, in consultation with the Montana department of fish, wildlife and parks, where wildlife populations would be adversely affected by increased human population density, increased traffic, increased human activity, or by displacement, and a description of significant impacts to wildlife species that likely would result from these habitat changes, including changes in size, distribution and reproduction of aquatic and terrestrial wildlife populations;

(Annotation: Information required by ARM 36.7.2515(3)(b) may be cross-referenced as appropriate.)

(e) identification of areas, in consultation with the Montana department of fish, wildlife and parks and department of health, where pollutants may enter a stream or watercourse as a result of failure of dikes, dams, pipelines, or any other cause, and an asssessment of the impacts to aquatic life and habitats that would result from any such failure;

(f) an assessment based on current literature of the potential effects of emissions on vegetative communities, including crops and ornamental plants, in the impact zones, including direct effects of emissions on foliage, reduction in productivity of soils, and changes in phenology of agricultural species;

(Annotation: In determining impacts to natural vegetation and crops resulting from air pollution, it is suggested that the applicant consult the following reference: U.S. Fish and Wildlife Service. 1978. "Impacts of Coal-Fired Power Plants on Fish, Wildlife, and Their Habitats." FWS/OBS-78/29; U.S. Fish and Wildlife Service. 1978. "A Biologist's Manual for the Evaluation of Impacts of Coal-Fired Power Plants on Fish, Wildlife, and Their Habitats." FWS/OBS-78/75; U.S.EPA 1981. "Air quality criteria for particulate matter and sulfur oxides." The applicant may also consult MDHES, UM, Environmental Studies Laboratory; U.S. EPA, Environmental Criteria and Assessment office, Research Triangle Park, and the Argonne National Laboratory for further reference sources.)

(g) a description of the method used to evaluate the impact risk to fisheries, wildlife, and vegetation at the alternative sites; and

(h) documentation that agencies with management responsibility for any affected biological resources have been consulted concerning impacts and mitigation, and a description and evaluation of the mitigation measures suggested by these agencies.

(18) Based on the cultural resource description required by ARM 36.7.2512(8), an application must contain cultural resource data for each alternative site and its impact zones. The impact zones include lands where surface disturbance that occurs during construction and operation of the facility would directly affect the integrity of cultural resources and known sites from which the facility would be clearly visible from a distance of 30 miles or less where the values of the cultural resources may be significantly affected by the visual presence of the facility. An application must contain the following data:

(a) a detailed description of specific properties likely to be affected by the facility, based on the results of an in-depth archival and documentary research effort;

(b) based on the results of (a) and appropriate field checking of site boundaries, a discussion of the accuracy of the overview predictions required by ARM 36.7.2512(8) concerning:

(i) site densities and distribution;

(ii) the presence or absence of sites, trails, and properties; and

(iii) site integrity and existing modern intrusions;

(c) For any cultural resource sites or properties identified or more fully defined by the information required by (a) and (b), a discussion, based on consultation with the state historic preservation office, of the potential eligibility of these sites or properties for listing on the national register.

(19) An application must contain an assessment of the potential impacts of the facility on cultural resources for each alternative site. The assessment must address the potential for physical destruction or degradation during construction or operation of the facility. Cultural resource-related information required by (12) and (21) will satisfy the visual and recreation-related impact requirements of this section. In addition, for each potentially affected cultural resource property or site defined by ARM 36.7.2504(1)(i) and (2)(d) or by ARM 36.7.2505(2)(f) and (g), and for any properties or sites identified by (18)(c) that may be potentially eligible for listing on the national register, the assessment must include a discussion of whether the facility would significantly affect the qualities for which these sites or properties were listed or could be listed.

(20) An application must contain baseline data concerning recreation areas for each alternative site and its impact zones. For the recreation areas defined by ARM 36.7.2503, ARM 36.7.2504(1)(b)-(e), (i), and (2)(c), national natural landmarks where recreation is listed as a current site use, (2)(d) and (e), and by ARM 36.7.2505(1)(a) and (2)(e) and (h), the impact zone includes the area within a 30 mile radius of the facility if the facility is within view or within a ten-mile radius if not within view of the facility. For the recreation areas listed in (a) and (b) below, the impact zone includes the area within a 5-mile radius of each alternative site.

(a) Based on consultation with appropriate local, state, and federal agencies, an application must include an overlay identifying any recreational areas or locales which are provided with public access and where public recreational use occurs within the impact zone other than those specifically referenced above.

(b) An application must include an overlay showing fishing access areas, public and private campgrounds and intensive outdoor recreation areas such as ski areas, local parks and picnic areas.

(Annotation: Consult MDFWP and local governments for data.)

(c) An application must contain a list of the recreation areas located within the impact zones for each alternative site, cross-referenced to the overlays required by ARM 36.7.2514(4) and by (a) and (b) above, a description of each area, including any prominent recreational facilities and aesthetic features, a description of how the area is used for recreation and, if available, identification of the types of users of the area and a use level estimate.

(d) An application must contain a description of any plans to create new or upgrade existing recreation facilities.

(21) An application must contain an assessment of the potential adverse impacts of the facility on the recreation settings defined by (20) for each alternative site. The assessment shall be limited to recreation areas likely to be affected by the facility. Information provided in response to (12) concerning aesthetic impacts on recreation settings may be cross-referenced as appropriate. For each recreation setting or area that would be significantly affected, an application must contain the following information:

(a) a description of how the recreation area or setting would be affected, including aesthetic impacts of the facility;

(b) a description of how recreational activities and experiences at each area or setting could change as a result of the facility and the potential for use of the area or setting to be curtailed or terminated, or for some user groups to be affected more than others;

(c) a description of the relationship of each affected area or setting to the local and regional supply of recreation opportunities, including a discussion of whether an affected area or setting is unusual or unique in its region, by virtue of its providing opportunities unavailable elsewhere; and

(d) documentation that agencies with recreation management responsibility for each affected area or setting have been consulted concerning the impacts and mitigation, and a description and evaluation of the mitigation measures suggested by these agencies.

(Annotation: Applicants may consult the following in preparing the information: Driver, B.L., 1976, "Quantification of Outdoor Recreationists' Preferences," p. 165-187 in Research Camping and Environmental Education, Betty Van der Smissen (ed.) Penn State Series II, University Park, PA.; Driver, B.L. and Brown, P.J., 1975, "A Social Psychological Definition of Recreation Demand, With Implications for Recreation Resource Planning," Appendix A in: Assessing Demand for Outdoor Recreation, U.S. Department of the Interior, Bureau of Outdoor Recreation, Washington, D.C.; Driver, B.L. and Brown, P.J., 1978, "The Opportunity Spectrum Concept and Behavioral Information in Outdoor Recreation and Resource Supply Inventories: A Rationale," in Integrated Inventories of Renewable Natural Resources. U.S.D.A. Forest Service General Technical Report Rm-55, Fort Collins, CO: Rocky Mountain Forest and Range Experiment Station; Clark, R.W. and Stankey, G.H., 1979, The Recreation Opportunity Spectrum: A Framework for Planning Management, and Research, U.S.D.A. Forest Service General Technical Report PNW-98, Seattle: Pacific Northwest Forest and Range Experiment Station.)

(22) An application must contain the following baseline data for surface waters for each alternative site:

(a) an overlay showing ponds, lakes, rivers, streams, springs, wetlands or marshes that could be affected by construction activities, atmospheric dispersal of pollutants, or water withdrawals or discharges, including any downstream areas where solid or liquid pollutants may enter surface waters

as a result of accidental failure of any dikes or dams or any other cause. The overlay shall include, as appropriate and available, the name of each stream or other water body and its department of health water quality classification.

(Annotation: Information required by ARM 36.7.2512(1)(p), and 36.7.2515(13) and (16) should be used in preparing this overlay.)

(b) data sufficient to determine the normal and seasonal variability in water quality and stream flow and/or changes in lake or reservoir elevation, if available; and

(c) an estimate of the amount of water needed and the source(s), for consumptive and nonconsumptive uses to construct, operate, and maintain the facility.

(Annotation: Information supplied according to ARM 36.7.3002(5), 36.7.3004(4), ARM 36.7.2506, and 36.7.2507 may be cross-referenced as appropriate; consult USGS and MDHES and ARM 16.20.602.)

(23) An application must contain an assessment of impacts of the facility on surface water quantity and quality, stream banks and stream hydrology, and water users for each stream or other water body identified on the map required by (22)(a), including the following information:

(a) a description of how flows and/or water elevations would change as a result of facility construction, operation, and maintenance;

(b) an assessment of impacts on existing water rights, if any;

(c) an assessment of predicted water quality changes and discharges resulting from facility construction, operation, and maintenance including impacts on water users due to changes in water quality;

(d) an overlay showing the location of riparian vegetation buffer strips that would be left undisturbed, and the location of any proposed sediment control structures, and an assessment of the risk of stream sedimentation, including plans to control sediment production; and

(e) a monitoring plan for determining potential impacts during operation.

(24) An application must contain baseline data concerning groundwater quantity and quality within an impact zone that includes the area within one mile of each alternative site and one mile down-gradient or down-slope from any waste storage facilities located off-site except where artesian or confined conditions dictate a larger impact zone. The following data are required:

(a) A detailed description of aquifer characteristics, water quality and existing uses; and

(b) Cross sections illustrating the geology, depth to water, and locations of existing wells, and wells proposed by the applicant cross-referenced to or included in the overlay required by (6)(b).

(25) An application must contain an assessment of impacts of the facility on groundwater quantity and quality, including effects of water withdrawals and discharges based on the information required by (24), a specific discussion of the potential effects of the facility on existing water users, and a monitoring plan for determining potential impacts during operation.

(Annotation: Information provided pursuant to ARM 36.7.2515(6) and (7) should be cross-referenced as appropriate.)

(26) An application must contain the following baseline data concerning potential noise, radio and television interference, and electrical effects of the facility as applicable for each alternative site.

(a) An assessment of potential noise impacts of the facility, including an estimate of average noise expressed on an A-weighted day-night scale at the property boundary;

(Annotation: Consult National Academy of Sciences, 1977, "Guidelines for Preparing Environmental Impact Statements of Noise," Report of Working Group 69, Committee on Hearing, Bioacoustics, and Biomechanics, National Research Council, Washington, D.C.; and Environmental Protection Agency, 1974, "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare With an Adequate Margin of Safety," EPA 550/9-74-004, Washington, D.C.)

(b) For electric generation facilities, an assessment of the potential for the facility to cause radio and television interference and interference with any other communication systems;

(c) A description of mitigation measures to reduce noise and interference with communication systems.

(27) An application must contain an assessment of occupational health and safety considerations, including a list of hazardous substances workers may be exposed to, anticipated conditions of exposure, and a description of measures that are proposed to reduce exposure and adverse effects.

(Annotation: Cross-references to information provided pursuant to ARM 36.7.3004(5) should be included as appropriate.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2516 ENERGY GENERATION AND CONVERSION FACILITIES, COMPARISON OF ALTERNATIVE SITES An application must contain a comparison of the alternative sites which includes the following:

(1) A summary of significant adverse impacts of the proposed facility for each of the alternative sites, and the impact zones around them as determined by the baseline study conducted pursuant to ARM 36.7.2514 and ARM 36.7.2515.

(2) A description of the degree to which significant adverse impacts can be mitigated for each alternative site.

(3) A ranking of the alternative sites from best to worst for each of the following categories and an indication of the relative differences among the alternative sites for each category.

(a) Levelized delivered cost of energy, including environmental costs and mitigation costs;

(b) Reliability (see ARM 36.7.2207);

(c) Land use considerations;

(d) Socioeconomic considerations;

(e) Earth resources;

(f) Fuel sources;

(g) Engineering considerations;

(h) Visual resources;

(i) Biological resources;

(j) Historical, archaeological and paleontological resources;

(k) Recreation;

(l) Water resources;

(m) Any other categories important to the applicant.

(4) A comparative ranking of the alternative sites from best to worst and an indication of the magnitude of the differences between sites, considering all of the categories listed in (3) consistent with the requirements of ARM 36.7.2517(5).

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2517 ENERGY GENERATION AND CONVERSION FACILITIES, SELECTION OF THE PREFERRED SITE The applicant must select a preferred site from the alternative sites selected in accordance with ARM 36.7.2513. An application shall contain a discussion of the rationale used to make the selection, including the following:

(1) The applicant's selection criteria and how they were applied;

(2) An explanation of how the preferred site criteria listed in ARM 36.7.2502 were applied. If weighting of the criteria is used in order to select the preferred site, an application must identify the relative weights given to each criterion and the reasons for assigning each weight;

(3) An explanation of how exclusion areas listed in ARM 36.7.2503 were considered in selecting the preferred site;

(4) An explanation of how sensitive areas listed in ARM 36.7.2504 and areas of concern listed in ARM 36.7.2505 were considered in selecting the preferred site; and

(5) A discussion of the relative importance of the categories listed in ARM 36.7.2516(3) and identification of any categories that were considered more important than others in selecting the preferred site. An application must clearly explain any weighting system used to portray differences in

importance among the categories in selecting the preferred site.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Rules 36.7.2518 - 36.7.2529 Reserved

36.7.2530 LINEAR FACILITIES, GENERAL REQUIREMENTS OF THE ALTERNATIVE SITING STUDY An application for a linear facility must contain an alternative siting study and baseline environmental data as specified in ARM 36.7.2530 - ARM 36.7.2547.

(Annotation: The alternative siting study is required in order to identify a preferred route that will accommodate the facility for which a need is established (ARM 36.7.2212-36.7.2218) and for which there are no better alternatives (ARM 36.7.2410-36.7.2417) given the environmental and economic costs and benefits. The preferred route should result in minimum adverse environmental impacts. Adverse impacts are minimized by: 1) avoiding exclusion areas; 2) selecting a preferred route with the characteristics listed in the preferred route criteria; 3) avoiding or mitigating significant adverse impacts in sensitive areas and areas of concern; and 4) mitigation of significant adverse impacts that would occur as a result of constructing the facility.

Sensitive areas and areas of concern should not be crossed by a facility unless the applicant can demonstrate that no significant adverse impacts would result, or that mitigation of significant adverse impacts is possible, or unless siting the facility in or through a sensitive area or area of concern would result in less cumulative adverse environmental impact and economic costs, including the costs of mitigation, than siting the facility in an alternative location.

The alternative siting study is conducted within a study area which contains all reasonable end points for the facility (see ARM 36.7.2536). The purposes of the alternative siting study are accomplished by three successive levels of analysis within the study area: the reconnaissance, the inventory and the baseline study. Cost, engineering considerations, and adverse environmental impacts are to be considered at each level of analysis.

The reconnaissance relies upon existing environmental data which the applicant is required to collect in order to determine the locations of exclusion areas and certain sensitive areas and areas of concern. Based on this information, the applicant is required to identify study corridors. These are geographic areas of variable width that are generally suitable for location of a linear facility. The applicant identifies the study corridors by eliminating sensitive areas and areas of concern from consideration where possible and by choosing general locations which are feasible and desirable based on cost and engineering considerations.

The inventory is conducted following the reconnaissance and requires collection of information about the locations of additional sensitive areas and areas of concern, as well as

certain land cover characteristics, land uses, and other information about the study corridors. Based on this information and consideration of baseline sensitive areas and areas of concern the applicant is required to identify alternative routes within the study corridors. Through a comparative analysis of the advantages and disadvantages of the routes, the applicant is required to select at least three alternative routes which would be the most suitable for locating the proposed facility. "Route" is defined as a preliminary location for a facility depicted to within one-tenth of a mile on a 1:24,000 scale map (see ARM 36.7.1501(55). The applicant need not survey a route, and should anticipate that the centerline process will be used to select the final facility location. This process is described in the definition of centerline in ARM 36.7.1501(15) and in the specific centerline rules in subchapter 40.

The baseline study is concerned only with the alternative routes, one of which is the preferred route. Additional sensitive areas and areas of concern are identified at this level of analysis. Baseline data, a detailed assessment of the adverse impacts the facility would have on the environment if it were constructed along each of the alternative routes, and identification of plans or measures to mitigate the adverse environmental impacts is required. Baseline data are collected within "impact zones" (see ARM 36.7.1501(34)) which occur on either side of the route. The size of the impact zones vary according to the type of resource being studied, and the size of each zone is specified in the sections of ARM 36.7.2544. A comparison of the alternative routes based on this information, cost and engineering considerations (see ARM 36.7.2546), and an explanation of the reasons for selection of the preferred route (see ARM 36.7.2547) completes the siting study.

The methods used to collect and evaluate the required information, and the judgements applied in selecting study corridors, study routes, alternative routes and the preferred route, are left to the applicant's discretion. However, the application must explicitly identify and explain all methods, judgements and considerations which entered into the applicant's analyses and decision process at each successive step of the siting study.)

(1) The alternative siting study for an electric transmission line or a pipeline must include:

(a) delineation of the study area (see ARM 36.7.2536)

(b) a reconnaissance of the study area (see ARM 36.7.2537);

(c) selection of study corridors (see ARM 36.7.2538);

(d) an inventory of the study corridors (see ARM 36.7.2539 and ARM 36.7.2540);

(e) selection of alternative routes (see ARM 36.7.2541);

(f) a baseline study of alternative routes, including baseline data collection and impact assessment (see ARM 36.7.2543, ARM 36.7.2544, ARM 36.7.2545);

(g) a comparison of alternative routes (see ARM 36.7.2546);

(h) selection of the preferred route (see ARM 36.7.2547).

(2) The alternative siting study shall include any alternative routes for the facility which have alternative end points or combinations of end points identified according to ARM 36.7.2410 and ARM 36.7.2411 that would meet the need the proposed facility is intended to address, and would have a levelized annual cost no more than 35 percent higher (25 percent higher for transmission lines 230 kV or greater voltage and 30 miles or longer) than the levelized annual cost of the facility or would have significant environmental advantages over the facility, with the end points proposed by the applicant.

(3) An application for a proposed generation or conversion facility as defined by 75-20-104(10)(a), MCA, must contain the applicable information required by ARM 36.7.2530 - ARM 36.7.2540 to select and evaluate study corridors for proposed new or upgraded linear facilities that would be associated with the generation or conversion facility if it were located at the applicant's preferred or alternative sites, unless the applicant can demonstrate that less detailed information meets these requirements, based on considerations of voltage, capacity, or length of the linear associated facilities, the homogeneity of the geographic area that would be traversed or the likelihood that no impacts will result from these associated facilities. Linear associated facilities affected include those that transport major amounts of materials, including fuel and water, required by the generation or conversion facility to produce energy or other primary products, and those that transmit or transport the energy or primary products of a facility to load centers or to a point of interconnection with a transmission or transportation system. Based on the applicable information required by ARM 36.7.2530 - ARM 36.7.2540, the applicant shall compare the study corridors and select a preferred corridor or corridors, as appropriate, for the linear associated facilities. An application must contain the following:

(a) a summary of the most important adverse impacts of each linear associated facility for each of the study corridors;

(b) a ranking of the study corridors from best to worst for each of the impact and cost categories listed in ARM 36.7.2546(3), including an indication of the relative differences among the study corridors for each category, and a comparative ranking of the study corridors considering all of the categories; and

(c) an explanation of the applicant's reasons for selecting the preferred corridor(s), and an explanation of the consideration given to the applicable preferred route criteria listed in ARM 36.7.2531, exclusion areas listed in ARM 36.7.2532, sensitive areas listed in ARM 36.7.2533 and areas of concern listed in ARM 36.7.2534 or ARM 36.7.2535.

(Annotation: Applicants intending to construct linear associated facilities are encouraged to consult with the department early in the application preparation stage regarding information requirements. Procedures for approving a centerline for associated linear facilities will be specified in the certificate (see ARM 36.7.4001 and 36.7.4002).

The alternative siting study requirements address a comprehensive range of siting concerns and environmental impacts. Determinations concerning the applicability or relevance of the requirements to a particular associated linear facility and the appropriate level of detail needed to adequately address each requirement are dependent on the size, design and length of the associated facility, and the characteristics and complexity of the terrain that would be traversed. The consultation process betwen the applicant and the department regarding these issues is described in ARM 36.7.2104.)

(4) An application must contain a summary of the results of consultation with government agencies to identify their concerns over the proposed facility's possible locations or effects on the environment, and the way the applicant considered these concerns in identifying preferred and alternative routes for the facility.

(5) An application may contain any valid and useful existing studies, reports, or data prepared on the linear facility and may be submitted by the applicant towards fulfilling the requirements of ARM 36.7.2530 - ARM 36.7.2547 but shall be subject to supplementation, and shall be used by the department only to the extent it considers them applicable.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2531 LINEAR FACILITIES, PREFERRED ROUTE CRITERIA Preferred routes conform to the criteria listed in 75-20-301(2)(i), MCA, and achieve the best balance among the following by being located:

(1) For electric transmission lines:

(a) where there is the greatest potential for general local acceptance of the facility;

(b) where they utilize or parallel existing utility and/or transportation corridors;

(c) to allow for selection of a centerline which is located in nonresidential areas;

(Annotation: It should be noted that this criterion may be impractical for terminus points or portions of routes in or near urban areas.)

(d) on rangeland rather than cropland and on nonirrigated or flood irrigated land rather than mechanically irrigated land;

(e) in logged areas rather than undisturbed forest, in timbered areas,

(f) in geologically stable areas with nonerosive soils in flat or gently rolling terrain;

(g) in roaded areas where existing roads can be used for access to the facility during construction and maintenance;

(h) so that structures need not be located on the floodplain;

(i) where the facility will create the least visual impact;

(j) a safe distance from residences and other areas of human concentration; and

(k) in accordance with applicable local, state, or federal management plans when public lands are crossed.

(2) For pipelines:

(a) conform to the criteria listed in (1)(a), (b), (e), (f), (g), (i), (j) and (k); and

(b) cross lands which can be returned to their original condition through recontouring, conservation of topsoil and reclamation.

(Annotation: Section 75-20-301(2)(i), MCA states "that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503." The applicant should consider the preferred route criteria at each level of analysis required by the siting study.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2532 LINEAR FACILITIES, EXCLUSION AREAS The following areas are exclusion areas within the study area and shall be eliminated from further consideration for siting the facility unless the legislative or administrative unit of government with direct authority over the area gives the applicant permission to locate the facility there. Information concerning the locations of exclusion areas is required by the reconnaissance and is considered throughout the alternative siting study.

(1) National wilderness areas.

(Annotation: Consult USFS and BLM for data. Areas under study for wilderness designation are treated in ARM 36.7.2533.)

(2) National primitive areas.

(Annotation: Consult USFS and BLM for data.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2533 LINEAR FACILITIES, ELECTRIC TRANSMISSION LINES, SENSITIVE AREAS The following areas are sensitive areas and should not be crossed by a facility unless the applicant can

demonstrate that no significant adverse impacts are likely to result, or that mitigation of significant adverse impacts is possible, or that siting the facility in or through a sensitive area would result in less cumulative adverse environmental impact and economic costs, including the costs of reasonable mitigation, than siting the facility in an alternative location. Requirements for information concerning the locations of sensitive areas are divided among the reconnaissance, the inventory and the baseline levels of the siting study. Any sensitive areas initially identified by either the reconnaissance or the inventory shall be considered throughout the remainder of the alternative siting study, in the selection of alternative routes, and in the assessment of impacts required by the baseline study if any of these areas is within the impact zone of an alternative route.

(Annotation: The boundaries of sensitive areas are delineated on published maps or are defined by existing data in agency files or other sources. The annotations accompanying each sensitive area indicate where the applicant can obtain data.)

(1) For the reconnaissance, the sensitive areas are as follows:

(a) national wildlife refuges and ranges, state game ranges and game management areas;

(Annotation: These areas are designated by the Department of the Interior (USDI) and MDFWP.)

(b) national and state parks and monuments;

(Annotation: Contact NPS and MDFWP for data.)

(c) national and state recreation areas;

(Annotation: Contact NPS and MDFWP for data.)

(d) rivers in the national wild and scenic rivers system and rivers under active study for inclusion in the system; and

(Annotation: Contact BLM, USFS, and NPS for data.)

(e) roadless areas of 5,000 acres or greater in size, managed by federal or state agencies to retain their roadless character.

(Annotation: Contact BLM, USFS, MDSL and MDFWP for data. This includes areas under study for wilderness designation.)

(2) For the inventory, the sensitive areas are as follows:

(a) communication facilities, including television and radio towers, microwave facilities, and law enforcement and emergency network facilities;

(Annotation: Consult Federal Communications Commission, television, radio, railroad and telephone service providers, and the Montana Highway Patrol.)

(b) military installations, including, but not limited to, military bases, command centers, missile silos, and radar towers;

(Annotation: Consult appropriate U.S. Defense Department Agencies.)

(c) land areas covered by conservation easements where the presence of the facility would be incompatible with a management plan established by a state or federal agency;

(Annotation: Consult Nature Conservancy, Montana Land Reliance, local government planning agencies, USFS, BLM, USFWS, MDSL, and MDFWP.)

(d) public and private airports and airfields, and any controlled airspace associated with them, and other air traffic hazard areas identified by the Montana aeronautics division and the federal aviation administration;

(Annotation: Consult the Aeronautics Division of the MDC and the Federal Aviation Administration.)

(e) state or federal waterfowl production areas;

(Annotation: Consult MDFWP and USFWS.)

(f) unique habitats and natural areas designated by the national park service, the USDA forest service, the bureau of land management, or the state of Montana as national natural landmarks, natural areas, research natural areas, areas of critical environmental concern, special interest areas, research botanical areas, outstanding natural areas;

(Annotation: Consult NPS, MDFWP, BLM, USFS, and MDSL.)

(g) designated critical habitat for state or federally listed threatened or endangered species;

(Annotation: Consult USFWS and MDFWP for locations.)

(h) national historic landmarks, and national register historic districts and sites;

(Annotation: Consult the SHPO and National Registry of Historic Landmarks.)

(i) national register historic districts and sites nominated to or designated by SHPO (state historic preservation office);

(Annotation: SHPO can provide information and recommendations for additional contacts with appropriate federal land management agencies and tribal authorities. Also consult National Registry of Historic Landmarks.)

(j) national trails;

(Annotation: Consult NPS and see 16 USC 1242-1245)

(k) municipal watersheds; and

(Annotation: Consult MDHES.)

(l) streams and rivers designated class I and II by the Montana department of fish, wildlife and parks.

(Annotation: Contact MDFWP for data.)

(3) For the baseline study, the sensitive areas are:
(a) schools and land areas designated by local school boards for future school development;

(Annotation: Consult local government officials and school districts.)

(b) agricultural experiment stations;

(Annotation: Consult MSU.)

(c) scenic overlooks and scenic highways; and

(Annotation: Consult Montana Department of Highways.)

(d) habitats occupied at least seasonally by resident state or federally listed threatened and endangered species.

(Annotation: Consult MDFWP and USFWS.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2534 LINEAR FACILITIES, ELECTRIC TRANSMISSION LINES, AREAS OF CONCERN The following areas are areas of concern and should not be crossed by a facility unless the applicant can demonstrate that no significant adverse impacts are likely to result, or that mitigation of significant adverse impacts is possible, or unless siting the facility in or through an area of concern would result in less cumulative adverse environmental impact and economic costs, including the costs of reasonable mitigation, than siting the facility in an alternative location. Requirements for information about the locations of areas of concern are divided among the reconnaissance, the inventory and the baseline levels of the siting study. Areas of concern initially identified by either the reconnaissance or the inventory shall be considered

throughout the remainder of the alternative siting study, in the selection of alternative routes, and in the assessment of impacts required by the baseline study if any of these areas is within the impact zone of an alternative route.

(Annotation: Some areas of concern have boundaries which are delineated on published maps or are defined by existing data in agency files or other sources. The boundaries of other areas of concern will be defined by the applicant's analysis and will require consultation with appropriate government agencies and/or field investigations. The annotations accompanying each area of concern indicate where the applicant can obtain existing data, or where advice and guidance can be obtained if field work is necessary.)

(1) For the reconnaissance, the areas of concern are as follows:

(a) areas of rugged topography defined as areas with slopes greater than 30 percent; and

(Annotation: This material can be derived from USGS topographic maps or obtained from digital data on file with USGS.)

(b) specially managed buffer areas surrounding exclusion areas.

(Annotation: Consult USFS and BLM for data.)

(2) For the inventory, the areas of concern are as follows:

(a) cities, towns and unincorporated communities, and residential clusters of 5 or more dwelling units per 20 acres, based on a circle of approximately 1000 feet in diameter;

(Annotation: Consult most recent U.S. Census, local government officials, USGS orthophoto quads, aerial photos, and supplement as necessary with other maps and field investigations.)

(b) mechanically irrigated land, other irrigated land, and dry cropland;

(Annotation: Consult aerial photos, county conservation districts, the SCS, and supplement, as necessary, with field investigation.)

(c) prime or unique farmland and orchards;

(Annotation: Consult SCS.)

(d) permitted surface mining areas;

(Annotation: Consult MDSL.)

(e) highly erodible soils and areas with severe reclamation constraints, defined as soils developed on cretaceous shales, intrusives and certain lacustrine deposits;

(Annotation: Consult SCS, MSU, UM, MBMG, BLM, USFS for data in addition to field investigations by the applicant. The applicant should be cognizant of slope in relation to erodibility in determining these areas.)

(f) areas where the presence of the facility would be incompatible with published visual management plans adopted by federal, state, or local governments;

(Annotation: These areas are identified in formally adopted land use plans and have specified management objectives which indicate these areas would be visually incompatible with a proposed facility. Contact USFS, BLM and local governments for data.)

(g) the winter distribution of elk, deer, moose, pronghorn, mountain goat and bighorn sheep and areas where they concentrate during severe winters, as designated by the Montana department of fish, wildlife and parks, the bureau of land management, and the USDA forest service;

(Annotation: Consult MDFWP, BLM and USFS. These areas should be mapped at a scale of 1:250,000. Some location maps are on file at the MDFWP Research Laboratory, MSU.)

(h) major elk summer security areas which are any forested areas greater than 1/2 mile in minimum radius, more than 1/2 mile from an existing road, and designated by the Montana department of fish, wildlife and parks, the bureau of land management, and the USDA forest service as elk summer range;

(Annotation: Consult MDFWP, USFS and BLM for data and USFS, BLM and county road maps supplemented with air photos which show recent road development.)

(i) habitats occupied at least seasonally by mountain sheep and mountain goat as designated by the Montana department of fish, wildlife and parks;

(Annotation: This range should be mapped at a scale of 1:250,000. Consult with MDFWP for data.)

(j) sage grouse and sharp-tailed grouse breeding areas, the winter distribution of sage grouse and sharp-tailed grouse, and areas where they concentrate during severe winters as designated by the Montana department of fish, wildlife and parks;

(Annotation: These areas should be mapped at a scale of 1:250,000. Consult MDFWP for data.)

(k) areas with high waterfowl population densities including prime waterfowl habitat that have been designated on maps by the Montana department of fish, wildlife and parks and other areas identified by the Montana department of fish, wildlife and parks or US fish and wildlife service as waterfowl concentration areas or low-level feeding flight paths;

(Annotation: Consult MDFWP, USFWS and MDNRC for data; field investigations by the applicant during peaks of spring and fall migrations and during overwintering periods is recommended.)

(l) any undeveloped land or water areas that contain known natural features of unusual scientific, educational or recreational significance;

(Annotation: Consult NPS, MDFWP, BLM, USFS, MDSL and Nature Conservancy for data in addition to the applicant's field work.)

(m) areas with geologic units or formations that show a high probability of including significant paleontological resources;

(Annotation: Consult the Museum of the Rockies, MSU.)

(n) sites with evidence of contemporary use that have religious or heritage significance and value to Indians as defined by ARM 36.7.2540(8);

(Annotation: SHPO can provide information and recommendations for additional contacts with appropriate federal land management agencies and tribal authorities. Also consult National Registry of Historic Landmarks.)

(o) standing water bodies, including any lake, wetland, marsh or reservoir, and intermittent water bodies and internally drained basins that reach a surface area of 20 acres or more at least one year out of ten;

(Annotation: Consult USGS 7.5' and 15' topographic maps and supplement, as necessary, with field investigations.)

(p) surface supplies of potable water; and

(Annotation: Consult MDHES and supplement, as necessary, with field investigations to determine if residences are supplied with surface waters for household use.)

(q) for substations, switching stations, and/or terminus points, active faults showing evidence of post-miocene movement.

(Annotation: Consult USGS, MBMG, UM, and MSU.)

(3) For the baseline study, the areas of concern are:

(a) individual residences not included within one of the urban or residential clusters defined by (2)(a) and major farm support buildings including calving or lambing sheds;

(b) snow avalanche chutes and track areas, including the trenches, troughs and corridors through which snow and ice passes;

(Annotation: These data must be generated by the applicant.)

(c) mature riparian forests defined as a stand of cottonwood or mixed cottonwood-conifer forests greater than 300 feet long and 30 feet wide where average canopy height is 50 feet or more and average density of mature trees is greater than 20 stems per acre;

(Annotation: Consult ASCS and SCS aerial photographs, supplemented by field investigations.)

(d) nesting colonies, defined as 5 or more pairs within 40 acres, of white pelicans, great blue herons, double-crested cormorants, gulls, or terns;

(Annotation: Consult the USFWS, BLM, USFS, MDFWP for data.)

(e) habitats occupied at least seasonally and critical to species listed as "species of special interest or concern" by the Montana department of fish, wildlife and parks, and the US fish and wildlife service; and

(Annotation: Consult MDFWP and USFWS for data, in addition to field investigations by the applicant.)

(f) limited access areas in mountainous or rugged terrain, defined as areas with slopes greater than 15 percent, located more than one-half mile from an existing road.

(Annotation: The applicant must generate this information from USGS topographic maps at a resolution appropriate to the map scale required by ARM 36.7.2539, and USFS, BLM and county road maps supplemented with air photos which show recent road development.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2535 LINEAR FACILITIES, PIPELINES, SENSITIVE AREAS AND AREAS OF CONCERN For pipelines, sensitive areas and areas of concern include:

(1) For the reconnaissance, the sensitive areas listed in ARM 36.7.2533(1) and the areas of concern listed in ARM 36.7.2534(1)(b); and

(a) active faults showing evidence of post-miocene movement;

(Annotation: Consult USGS, MBMG, UM and MSU.)

(2) For the inventory, the sensitive areas listed in ARM 36.7.2533(2)(c) and (e)-(l) and the areas of concern listed in ARM 36.7.2534(2); and

(a) moderately rugged topography defined as areas with slopes greater than 15 percent;

(Annotation: The applicant must generate these data from USGS topographic maps at a resolution appropriate to the map scale required by ARM 36.7.2539(2).)

(3) For the baseline study, the sensitive areas listed in ARM 36.7.2533(3) and the areas of concern listed in ARM 36.7.2534(3); and

(a) for any liquid pipeline crossing of a river or stream that is located within 15 miles upstream of a stream or stream reach designated class I by the Montana department of fish, wildlife and parks or a diversion for a municipal water supply.

(Annotation: Consult MDFWP and MDHES.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2536 LINEAR FACILITIES, DELINEATION OF THE STUDY AREA (1) An application must identify the study area or areas that include the following, considering the electrical load(s) to be served and/or electrical problem(s) or opportunities to be addressed by the facility, or the market area for the product that would be transported by the facility:

(a) all reasonable end points for the facility within or outside Montana;

(b) for facilities with end points outside Montana, all reasonable points for exiting Montana; and

(c) a geographical area between the end points or exit points of sufficient width to include all reasonable study corridors.

(Annotation: The applicant should be cognizant of the requirements of ARM 36.7.2530(2) when determining reasonable end points and study corridors.)

(2) An application must identify the factors used to determine the boundaries of the study area. Relevant information provided pursuant to ARM 36.7.2212 - ARM 36.7.2216 and ARM 36.7.2410 - ARM 36.7.2417 may be referenced.

(3) An application must contain a base map of the study area delineated on USGS topographic maps at a scale of 1:250,000.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2537 LINEAR FACILITIES, RECONNAISSANCE An application must contain a reconnaissance of the study area prescribed by ARM 36.7.2536 to select study corridors generally suitable for siting the facility.

(1) For electric transmission lines, the reconnaissance must include overlays to the base map required by ARM 36.7.2536(3) of the exclusion areas listed in ARM 36.7.2532, the sensitive areas listed in ARM 36.7.2533(1), and the areas of concern listed in ARM 36.7.2534(1) that occur in the study area.

(2) For pipelines, the reconnaissance must include overlays to the base map required by ARM 36.7.2536(3) of the exclusion areas listed in ARM 36.7.2532 and the sensitive areas and areas of concern listed in ARM 36.7.2535(1) that occur in the study area.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2538 LINEAR FACILITIES, SELECTION OF STUDY CORRIDORS (1) The applicant shall select study corridors, based on consideration of the following:

(a) exclusion areas, sensitive areas and areas of concern identified pursuant to ARM 36.7.2537;

(b) the preferred route criteria listed in ARM 36.7.2531(1) or (2);

(c) cost;

(d) reliability and engineering concerns; and

(e) other factors important to the applicant.

(2) The applicant shall delineate the boundaries of the study corridors with lines on the base map required by ARM 36.7.2539(2) that are accurate to within 0.10 mile (0.16 KM).

(3) An application must contain an explanation of the methods used to select the study corridors, an explanation of how the considerations listed in (1) were incorporated, and a discussion of the rationale for selecting the study corridors.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2539 LINEAR FACILITIES, INVENTORY, GENERAL REQUIREMENTS (1) An application must contain an inventory of the study corridors identified in ARM 36.7.2538 to select alternative routes suitable for siting the facility.

(2) An application must contain base maps of the study corridors. The base maps shall provide coverage at a scale of 1:62,500 or 1:24,000 of the geographic area within the study corridors. The applicant shall provide one mylar copy of each base map to the department. USGS 15 or 7.5 minute topographic maps, enlarged or reduced to the appropriate scale if necessary, shall be used to create the base maps, insofar as possible. Where topographic coverage is not available, USGS advance or final 7.5 minute or orthophoto quads or the best available published maps with a scale of 1:125,000 or 1:100,000, enlarged to the appropriate scale if necessary, shall be used.

(3) For electric transmission lines the exclusion areas listed in ARM 36.7.2532, the sensitive areas listed in ARM 36.7.2533(1) and (2), the areas of concern listed in ARM 36.7.2534(1) and (2), and the environmental information required by ARM 36.7.2540 that can be mapped shall be delineated on the minimum number of overlays to the base maps of the study corridors. The overlays shall clearly portray the required information. The applicant shall organize and present the required information on overlays according to the categories listed in ARM 36.7.2546(3)(c)-(e) and (g)-(l) to the extent it is practical. Within each category, uniform map scales must be used. The applicant shall submit one mylar copy of each overlay to the department. Where a map scale other than 1:62,500 is specified, the applicant may submit the information at the alternative scale, enlarged or reduced as specified in (2). All overlays shall clearly show section lines or corners and township and range locations.

(4) For pipelines, the exclusion areas listed in ARM 36.7.2532 and the sensitive areas and areas of concern listed in ARM 36.7.2535(1) and (2) that occur in the study corridors shall be delineated on the minimum number of overlays to the base map. The overlays shall clearly portray the required information. The applicant shall organize and present the required information on overlays according to the categories listed in ARM 36.7.2546(3)(c)-(e) and (g)-(l) to the extent it is practical. Within each category, uniform map scales must be used. The applicant shall submit one mylar copy of each overlay to the department. Where a map scale other than 1:62,500 is specified, the applicant may submit the information at the alternative scale, enlarged or reduced as specified in (2). All overlays shall clearly show section lines or corners and township and range locations.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2540 LINEAR FACILITIES, INVENTORY, ENVIRONMENTAL INFORMATION An application must contain the following environmental information for the geographic area within each study corridor.

(1) An application must contain one or more overlays depicting the location of the following land use and land cover categories. A minimum map resolution of 20 acres is required unless otherwise specified in any individual category listed below. Linear features required by (c), (d), and (e), shall be accurately mapped to within one-tenth mile. The applicant may combine information on an overlay provided that mapped categories are clearly distinguishable. All overlays shall clearly show section lines or corners and township and range locations.

(Annotation: The land use or land cover categories listed in (c), (d), and (h) below are shown on USGS quadrangle maps; all other categories are available from the sources noted.)

(a) the developed areas adjoining city and town boundaries;

(Annotation: Consult most recent U.S. Census, local government officials, USGS orthophoto quads, aerial photos, and supplement as necessary with other maps and field investigations.)

(b) designated residential growth areas;

(Annotation: Consult county land use plans.)

(c) existing federal and state highways, and designated and existing county roads;

(Annotation: Consult USGS 7.5' or 15' quads and county land use plans.)

(d) railroads and railroad right-of-ways;

(Annotation: Consult USGS 7.5' or 15' quads.)

(e) electric transmission lines of 50 kV or greater voltage design;

(Annotation: Utility applicants may submit current system maps of their service area to partially fulfill this data requirement. Some transmission lines are also indicated on USGS 7.5' and 15' quads.)

(f) nontimbered rangeland;

(Annotation: Consult ASCS photos.)

(g) industrial and commercial areas located outside of cities, towns and unincorporated communities; and

(Annotation: Examples of industrial areas include manufacturing establishments, major warehouses, and establishments where heavy equipment and machines are operated on a continuing basis. Examples of commercial areas include feedlots, and retail and wholesale trade and service establishments. Consult ASCS photos and local government officials.)

(h) forested lands.

(Annotation: Consult USGS 7.5' or 15' quads.)

(2) An application must contain an overlay showing the following land ownership categories:

(a) public land, by management agency;

(Annotation: Consult BLM National Resource Lands in Montana maps, and USGS, Forest Visitors maps.)

(b) tribal and Indian reservation land.

(Annotation: Consult tribal offices for data.)

(3) An application must contain an overlay depicting the following slope categories, at a minimum map resolution of 20 acres and contour intervals of 80 feet or less, unless different categories are approved in writing by the department:
(a) 0-15 percent;
(b) 15-30 percent; and
(c) greater than 30 percent.

(Annotation: Refer to USGS 7.5' and 15' topographic maps. These data may also be obtained from digital data on file with USGS.)

(4) An application must contain an estimate of the population in each population center identified on the overlay(s) required by ARM 36.7.2534(2)(a).

(5) An application must contain a narrative description of existing social characteristics and characteristics of the local economy of the communities within and near the study corridors. Projected future social and economic conditions should the facility not be built must also be discussed. The following information is required in the description for facilities of 230 kV or greater voltage. For facilities of less than 230 kV, a cursory discussion of information required by (a), (b) and (g) is sufficient:

(a) the relationship of current land uses to economic and social activities in the area;

(Annotation: The narrative should refer to the mapped information required by ARM 36.7.2540(1), as necessary. Consult local government officials, U.S. Census, and MDLI and MDC publications.)

(b) existing federal, state and local government land use plans and other local legal restrictions affecting land uses;

(Annotation: Consult USFS, BLM, BOR, MDFWP, and local government officials.)

(c) population and demographic characteristics;

(Annotation: Consult U.S. Census.)

(d) social structures, values and lifestyles that may be affected by the construction and operation of the facility and identification of any sub-groups that may be differentially affected by the project;

(Annotation: Social structures, values and lifestyles refers to a general characterization of beliefs, attitudes and behaviors resulting from the economic, social and cultural interrelationships of persons in the study corridors. These data must be generated by the applicant.)

(e) the local economy, income characteristics, labor force participation characteristics, the availability of skilled and semi-skilled labor, prevailing wage levels, and employment and unemployment rates;

(Annotation: Consult U.S. Census, local government officials, and MDLI and MDC publications.)

(f) the availability, adequacy, capacity and cost of public services, including roads, education, health, social, public safety, and sanitary services;

(Annotation: Consult local government officials.)

(g) fiscal characteristics of local government and school districts, including descriptions of revenue and expenditures; and

(Annotation: Consult local government officials.)

(h) the availability, adequacy, and capacity of housing and private sector health services.

(Annotation: Consult U.S. Census; the applicant must generate a portion of these data.)

(6) An application must characterize the nature and magnitude of public concerns about the facility based on contacts with representative groups of persons residing in the study corridors, and/or comments received at any scoping and other public meetings the applicant may hold, and comments from local service providers and public officials. The application must also identify alternatives to the proposed facility suggested by the public and must identify man-made and natural environmental features the public feels would be affected by the facility.

(Annotation: The applicant must generate this information.)

(7) An application must contain an overlay that identifies visually sensitive areas which are defined as those areas of highest visual quality and lowest visual compatibility with the facility based on the following:

(a) a description and an overlay of land areas categorized according to visual quality, considering the variety, harmony, naturalness, uniqueness and other appropriate characteristics of the study corridors; and

(Annotation: The applicant must generate this information. To identify categories of visual quality, the applicant should consider: 1) variety - the number of objects viewed in the landscape, their scale and distribution; 2) harmony - the combined quality of viewed landscape components, or their intercompatibility in creating a unified and aesthetically pleasing visual composition; 3) naturalness - the apparent

degree of freedom from encroachment by cultural modifications, as judged by level of development; and 4) distinctiveness - the relative scarcity of a landscape within a defined subregion. The applicant may refer to U.S. Department of Agriculture, Forest Service, 1974. National Forest Landscape Management, Volume 2: Chapter 1, "The Visual Management System" Handbook NO. 462; U.S. Department of the Interior, 1980, Visual Resource Management, BLM Handbook; USDA. Visual Character Types and Variety Class Description. Forest Service Handbook, Northern Region; and Jones and Jones, 1976. Visual Impact of High Voltage Transmission Facilities.)

(b) a description and an overlay of land areas categorized according to visual compatibility with the facility, considering vegetation, slope, landform definition, and other appropriate characteristics of the study corridors; for pipeline facilities, the degree of revegetation potential must also be included.

(Annotation: To identify areas of visual compatibility, the applicant should consider: 1) vegetation categories such as treeless and percentages of canopy cover, and 2) slope categories appropriate to the landscape and of sufficient detail to distinguish among landforms such as narrow and broad valley floors, steep and gentle valley walls, and rolling uplands. See ARM 36.7.2540(1) and (3) for portions of these data.)

(8) An application must contain an overview of the history and prehistory of the study corridors, including the following:

(a) documentation that a file search has been conducted to identify the types of potentially significant historical, prehistorical, architectural, and paleontological resource sites likely to be encountered in the study corridors and a statement indicating the amount of previous survey work conducted in the corridors;

(Annotation: Consultation with SHPO can provide some necessary file search information as well as recommendations to the applicant concerning any additional contacts which should be made pursuant to the American Indian Religious Freedom Act, the Archaeological Resources Protection Act, the National Historic Preservation Act, the Montana Antiquities Act, and other relevant laws protecting historical, archaeological, architectural and paleontological resources.)

(b) a summary of the nature of the existing historical, prehistorical, or paleontological data base and identification of any inadequacies such as a lack of previous survey work in the study corridors that could complicate efforts to fully define all significant classes of sites or properties and to anticipate their occurrence;

(c) identification of sites likely to be encountered in the study corridors and an assessment of the potential for sites to yield information of significant value to historic and prehistoric research; and

(d) a map at a scale of 1:125,000 indicating the location and the extent of previous survey work, based on the results of (a) and including a legend showing level of intensity, the reference date of survey, the sponsor, resultant report, the type of resource and the boundaries of each site, when available.

(Annotation: Adherence to the guidelines for BLM Class I inventory studies - Manual 6410 - is recommended. Procedures and salient objectives for compiling existing cultural resource data are outlined in this document.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2541 LINEAR FACILITIES, SELECTION OF ALTERNATIVE ROUTES (1) The applicant shall select at least three reasonable alternative routes within the study corridors for baseline study based on consideration of the following:

(a) exclusion areas, sensitive areas and areas of concern identified by ARM 36.7.2532, ARM 36.7.2533(1), (2) and (3), and ARM 36.7.2534(1), (2) and (3) for transmission lines or ARM 36.7.2532 and ARM 36.7.2535 for pipelines;

(Annotation: Map overlays of the baseline sensitive areas and areas of concern, ARM 36.7.2533(3) and 36.7.2534(3) respectively, are not required until the baseline study, ARM 36.7.2543. The applicant should, however, anticipate this requirement in selecting study routes.)

(b) the preferred route criteria listed in ARM 36.7.2531(1) or (2);

(c) the environmental information required by ARM 36.7.2540;

(d) cost, reliability, engineering concerns; and

(e) other factors important to the applicant.

(2) An application must contain an explanation of the methods used to select the alternative routes, an explanation of how the considerations listed in (1) were incorporated, and a discussion of the rationale for selecting the alternative routes.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

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36.7.2543 LINEAR FACILITIES, BASELINE STUDY, GENERAL REQUIREMENTS (1) An application must contain a baseline study of at least three reasonable alternative routes and their impact zones to gather baseline data describing the existing environment, to assess impacts associated with the proposed facilities, to identify mitigation strategies, and to select the preferred route.

(2) The applicant shall accurately map to within one-tenth mile each alternative route, the locations of any intermediate substations, compressor stations or pump stations (for pipelines), and all impact zones defined in ARM 36.7.2544 or ARM 36.7.2545 using lines one millimeter or less in width drawn on a 1:24,000 topographic base map. The line delineating each alternative route should identify a tentative, environmentally suitable location for the facility. These tentative locations need not be surveyed, but the applicant shall by reasonable effort, such as by air or by ground checking, determine the suitability of the location for a facility. The applicant shall provide one mylar copy of this base map to the department. For any areas where 1:24,000 topographic base maps are not available, USGS maps preliminary to the published 7.5 minute quadrangle maps shall be used, or where these are not available, USGS advance or final 7.5 minute orthophoto quads shall be used. Where none of these are available, USGS 15 minute topographic maps or the best available published maps with a scale of 1:125,000 or 100,000, enlarged to 1:24,000 if necessary, shall be used.

(3) An application must contain an overlay or overlays, as appropriate, to the base map required by (2) depicting the baseline data required by ARM 36.7.2544 or ARM 36.7.2545 that can be mapped and depicting the exclusion areas listed in ARM 36.7.2532, the sensitive areas listed in ARM 36.7.2533(1),(2), and (3) and the areas of concern listed in ARM 36.7.2534(1),(2), and (3) that are within the impact zones associated with each alternative route. For pipelines, the exclusion areas listed in ARM 36.7.2532, and the sensitive areas and areas of concern listed in ARM 36.7.2535(1),(2) and (3) that are within the impact zones associated with each alternative route shall be included. Cultural resource data required by ARM 36.7.2533(2)(h) and (i) and ARM 36.7.2534(2)(m) and (n) may not be mapped if the applicant obtains prior approval from the department. The applicant shall organize the information according to the categories listed in ARM 36.7.2546(3)(c)-(e) and (g)-(l) and shall present the information on the minimum number of overlays to the base map. The applicant shall provide one mylar copy of each overlay to the department. All overlays shall clearly show section lines or corners and township and range locations.

(Annotation: Impact zones are geographical areas associated with each alternative route that are studied to determine if they are affected by the construction, operation, maintenance or decommissioning of a facility. The boundaries of the impact zones, which vary for each applicable category of baseline data are specified in the following rules (see ARM 36.7.2544 or 36.7.2545).)

(4) An application must contain one set of black and white contact prints at a scale of 1:48,000 or 1:24,000 that provide complete physical aerial coverage of the alternative routes. These photos shall be taken during a season of full foliage no more than five years prior to filing the application unless

otherwise approved by the department. An application must contain advance or final USGS 7.5 minute orthophoto quads, where available, for the impact zones or portions of impact zones that are not covered by the aerial photos. However, this requirement does not apply to the impact zones associated with the assessment of social and economic impacts required pursuant to ARM 36.7.2544(4) and (5).

(5) An application must contain, for each alternative route, information required by the department of health and board of health to determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction pursuant to 75-20-216(3), MCA.

(6) An application must contain, where feasible, a tabulation of the amount, type and/or linear miles of any exclusion areas, sensitive areas, areas of concern and mapped baseline data required by ARM 36.7.2544 or ARM 36.7.2545, that would be crossed by each alternative route or that are located within the impact zones.

(7) An application must identify and discuss mitigation to reduce or eliminate significant adverse impacts of the facility along each alternative route where the applicant's assessment indicates that mitigation is necessary or desirable. For this purpose mitigation measures include, but are not limited to:

(a) alternative construction methods, techniques, and/or equipment;

(b) reclamation and facility maintenance methods;

(c) localized alternative route adjustments and alternative structure locations where significant adverse impacts may be avoided or minimized;

(d) alternative seasonal timing of construction;

(e) alternative facility or structure designs, height, span length, and alternative facility or structure materials; and

(f) alternative methods of crossing streams.

(Annotation: Mitigation of significant adverse impacts must be achieved to the satisfaction of the Board according to ARM 36.7.3505, 36.7.3507 and 36.7.3508.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2544 LINEAR FACILITIES, ELECTRIC TRANSMISSION LINES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT An application must contain baseline data and an assessment of the projected short and long-term changes and impacts that would result from construction, operation and maintenance of the facility for each alternative route and the impact zones whose boundaries are specified in the following sections, unless different impact zone boundaries are approved in writing by the department. The applicant must identify general and route-specific mitigation measures to reduce or eliminate these impacts. This information shall serve as a basis for evaluating and comparing alternative routes as required by ARM 36.7.2546 and selecting a preferred route as required by ARM

36.7.2547. Baseline data that require mapping shall be presented on the minimum number of overlays to the base map required by ARM 36.7.2543(2) that will clearly portray the information.

(Annotation: The following sections are presented in a sequence which parallels the order of topics set forth in 75-20-503, MCA, as closely as possible.)

(1) An application must contain an overlay depicting land use information required by ARM 36.7.2540(1) and the following data for an impact zone that includes the area within one mile of each alternative route for facilities of 230 kV or less voltage, and includes the area within two miles of each alternative route for facilities of greater than 230 kV:

(a) platted subdivisions;

(b) major public buildings; and

(c) pipelines 8 inches or greater in diameter.

(2) An application must contain a description of the approximate anticipated construction crew by size, skill, and wage levels, the variation in size as it relates to the construction schedule, and any significant variations in these factors among the alternative routes. If applicable, these data must also be provided for the permanent work force, except that variations in size, if any, must be described as they relate to the operation and maintenance schedule.

(3) An application must contain an assessment of the impacts of the facility on agricultural, residential, commercial, industrial, mining, and public land uses in the impact zone that is within one mile of each of the alternative routes, based on the information required by ARM 36.7.2543(3) and ARM 36.7.2544(1). The assessment of impacts on uses of land must address the compatibility of the facility with existing land use activities, potential changes in or interference with land uses that may occur as a result of the facility, nuisance effects, and potential inhibiting or preclusive effects of the facility on land use improvements or transitions from one type of land use to another. An application must specify any land uses for which there are no significant differences in impacts among the alternative routes.

(4) An application must contain an assessment of social impacts, if any, and any important impacts of the facility on the economy and on public and private services for an impact zone that encompasses the area potentially affected by each of the alternative routes, based on the information required by ARM 36.7.2540(5). An application must specify any economic, social or public or private service characteristics for which there are no significant differences in impacts among the alternative routes.

(Annotation: The boundaries of the impact zone for the assessment of social and economic impacts and of public attitudes are determined by the information required by ARM 36.7.2540(5) for the study corridors. Since the appropriate

size of the impact zone is dependent to a large extent on the density and distribution of population in the areas traversed by the alternative routes, consultation with MDNRC according to ARM 36.7.2104 is recommended.)

(5) An application must contain an assessment of public attitudes and concerns about the potential impacts of the facility, that is based on representative views of persons residing in the impact zone defined by the applicant pursuant to (4) for each alternative route. The assessment must include summaries of correspondence and summaries of personal interviews, if they are conducted, and other information the applicant has collected that records the comments and concerns public officials, local residents and other individuals and groups have raised about the facility. Summaries of issues and concerns identified at public meetings the applicant may hold or the results of any surveys the applicant may conduct must also be included. The applicant must conduct at least one public meeting that is accessible to the residents of the impact zone. The assessment must address the following:

(a) concerns about social, socioeconomic, taxation, and land use changes the facility could cause;

(b) concerns about natural environmental features that may be adversely affected by the facility;

(c) issues relating to the facility that may divide communities, cause individual resentment and frustration, and result in public debate; and

(d) issues relating to the facility of particular concern to landowners and residents in close proximity to any of the alternative routes considered.

(Annotation: The annotation for (4) above also applies to this section.)

(6) An application must contain a description of the access road requirements of each alternative route and an assessment of the potential impacts of construction of access roads. The description and assessment shall be based on sufficiently accurate information to allow the department and the board to make a valid comparison of alternative routes with respect to the requirements of the baseline study. The applicant shall obtain this information from existing maps showing roads and other information in existence at the time the application is prepared, but shall also make reasonable effort to confirm the information such as by air or by ground checking. The information and assessment shall include:

(a) an estimate of road mileage of new or substantially upgraded access road requirements for approximately 30 mile segments, or portions thereof, of each alternative route, and a description of the sources of data used to develop the estimates;

(b) an assessment of the likelihood of constructing access roads across any of the sensitive areas listed in ARM 36.7.2533 and the areas of concern listed in ARM 36.7.2534, and identification of any such areas; and

(c) an assessment of impacts to the areas identified in (b). This assessment may be contained in a single section of the application, or may be contained within each of the resource categories in ARM 36.7.2544(1)-(5) and (7)-(18), and cross-referenced as appropriate.

(Annotation: Information about the potential locations of access roads is important for predicting the magnitude of several types of impacts and for the overall comparison of alternative routes.)

(7) An application must contain an assessment of potential impacts of the facility on the earth resources along each alternative route and its impact zone. The impact assessment must address erosion, sedimentation, mass movement, and alterations of soil characteristics that could reduce productivity or fertility, including compaction or mixing of soil horizons. The impact zone shall consist of feasible locations for new or substantially upgraded access roads and the area between each alternative route and the associated access roads. The assessment must include an estimate of the mileage of access roads crossing each category of mapped information requested below. The information requirements are as follows:

(Annotation: The applicant may cross-reference information provided for the preferred route pursuant to ARM 36.7.3009, 36.7.3010 and 36.7.3011 which addresses the requirements of this subsection. Two important variables for determining the appropriate level of detail required by this section are the roughness of the terrain that would be crossed by an alternative route, and the amount of new or upgraded access roads that would be required. In most cases these considerations play a greater role in impact assessment than the voltage and design of the proposed facility. For example, the volume and complexity of the information required by this section may be significantly greater for alternative routes that cross a large amount of rough terrain than alternative routes that cross primarily flat or gently rolling terrain where few or no new access roads would be required.)

(a) an overlay of wind and water erosion risk and a discussion of the potential impacts considering soil characteristics, slope, predicted amount of disturbance and climatic conditions;

(Annotation: This information must be developed by the applicant. Consult SCS, BLM, USGS, USFS, MBMG, UM, and MSU.)

(b) an overlay and discussion of mass movement potential, including consideration of existing mass movement areas, bedrock geology and soils, slope aspect, vegetation, and groundwater conditions; and

(Annotation: This information must be developed by the applicant. Consult USGS, BLM, SCS, UM, MSU, and MBMG.)

(c) an overlay and discussion of constraints to reclamation and revegetation potential. Reclamation includes any site restoration, such as recontouring, reducing compaction, restoration of segregated topsoils, installation of soil erosion control structures, and weed control and successful establishment of vegetative cover in areas disturbed by facility construction. Constraints to reclamation include any physiographic or geologic feature or physical property of the soils that hinders or prohibits reclamation.

(Annotation: This information must be developed by the applicant. Consult BLM, USFS, SCS, MDSL, MBMG, UM, and MSU.)

(8) An application must contain the following data relating to the engineering of the facility for each alternative route:

(a) a description of any engineering differences among the alternative routes as they relate to the feasibility of expanding the transmission capacity of the facility through multiple circuiting or design modifications, or relating to whether the width of the proposed right-of-way is sufficient to accommodate future transmission lines;

(b) a discussion and appropriate drawings of alternative structure types and technologies that would be required by the engineering differences among alternative routes, if any;

(c) a discussion of problems posed by poor or seasonally restricted access;

(d) a discussion of compatibility or interference problems the facility may impose on existing transmission, transportation or communication facilities in close proximity to an alternative route, if any;

(e) an overlay depicting designated 100-year floodplains that would be crossed by the facility, a description of the potential for damage to the facility from construction in the floodplain, and an assessment of the potential for adverse impacts to the environment resulting from construction, operation and maintenance of the facility in the floodplain; and

(Annotation: Consult MDNRC, Water Resources Division, and FEMA (Flood Insurance Rate Map).)

(f) an assessment of aeronautical hazards created along each alternative route and an assessment of any applicable mitigation measures.

(Annotation: Mapped information concerning air hazard areas should be included as required pursuant to ARM 36.7.2533(2)(d) and 36.7.2544(1). Possible methods of mitigating aeronautical hazards include placement of multicolored 36-inch spherical markers on the overhead ground wire(s) at an effective spacing of 150 to 200 feet, painting structures with wide bands of aviation orange and white, or lighting structures with either flashing or steady burning red lights or white strobe lights. These methods may be employed singly or in combination

depending on the nature of the hazard, the location of other objects in the area and local terrain conditions. Prior to the Board's final approval of a centerline for a transmission facility it is anticipated that an on-site review will occur to determine the need for and the type of marking to be used.)

(9) An application must contain data concerning visual resource and viewer characteristics for any exclusion area, recreation area, national register or national register eligible site identified by ARM 36.7.2532 and ARM 36.7.2533(1)(b)-(e), (2)(f), (h), (i), (j), and (l), and any residential area, highway or county road identified by ARM 36.7.2533(3)(c), ARM 36.7.2534(2)(a) and (3)(a) and ARM 36.7.2540(1) from which the facility would be clearly visible. The following baseline data are required only for the referenced areas, sites and state or federal highways and county roads located within an impact zone which is defined as within 5 miles of an alternative route for a facility greater than 230 kV, or within 3 miles of an alternative route for a 161 kV to 230 kV facility or within 2 miles of an alternative route for a facility less than 161 kV:

(a) identification and an overlay of key observation points and a description of criteria used to select these points;

(Annotation: A key observation point is defined as one of a series of representative locations that collectively provide the full range of viewer and impact zone characteristics.)

(b) a description and evaluation of viewer characteristics, including proximity to the facility, orientation, estimated number of viewers, and duration of view; where a characteristic does not warrant differentiation, an application shall contain an explanation of the reasons;

(c) a description and evaluation of the compatibility of the proposed facility with the viewed area of the landscape, including any visually sensitive areas identified by ARM 36.7.2540(7);

(d) a description and categorization of levels of sensitivity (the relative degree of viewer interest in the visual resource);

(e) a description and evaluation of the opportunities for and effectiveness of available topographic and vegetative screening; and

(f) a description of the methods used to categorize and describe impact risk to potential viewers, as required by (a)-(e).

(Annotation: See Measuring the Visibility of High Voltage Transmission Facilities in the Pacific Northwest, Jones & Jones, 1976.)

(10) An application must contain an assessment of the potential types and levels of visual resource impacts for each alternative route, based on integration of visual quality and

visual compatibility information required by ARM 36.7.2540(7) with viewer characteristics information required by ARM 36.7.2544(9). The assessment must include a description of the potential alteration, visual quality and compatibility of lands affected by the facility, including a discussion of the methods used to integrate visual quality and visual compatibility data.

(Annotation: The information required by ARM 36.7.2544(3), (5), (13) and (15) may include visual impacts of the facility. The applicant should be cognizant of the overlap between land use, social, cultural, recreation, and visual impacts, and include cross-references in the application where appropriate in order to avoid repetition of material.)

(11) An application must contain a description of existing biological resources, including fisheries, wildlife, and vegetation, and an assessment of the potential impacts to these resources for each of the alternative routes, access roads, and other associated facilities. The assessment must include, but shall not be limited to, increased hunting and fishing pressure, habitat alteration, increased access to secure habitat, displacement, shifts in feeding or migration patterns, project-related interference with special use areas, wirestrikes and other mortality, and sedimentation and blockage of streams. An application must contain the following information:

(Annotation: Two important variables for determining the appropriate level of detail required by this section are the amount of new access roads that would be required, and the size of the facility as it relates to duration and timing of construction, the size of the construction crew and the size and type of equipment required for access road construction and stream crossings. In determining which species or habitats are of greatest susceptibility to project-related impacts, it is suggested the applicant should consider the sensitive areas and areas of concern listed in (b) below. Species or habitats may be susceptible to project-related impacts because of rarity, threatened or endangered status, low reproductive rates, low recovery rates, restricted distribution patterns, high vulnerability to disturbance, highly specialized habitat requirements or movement or migration patterns.)

(a) for an impact zone that includes the area within one mile of each alternative route, a list of species and/or habitats of greatest susceptibility to project-related impacts, including fisheries, wildlife and vegetation concerns identified by the applicant and appropriate managing agencies, and an explanation of the rationale and assumptions used to generate the list;

(b) an evaluation of the anticipated impacts to each species or habitat listed in (a), including a description of biological impacts which would occur in the sensitive areas listed in ARM 36.7.2533(1), (2)(e), (f), (g), and (1), (3)(b)

and (d) and the areas of concern listed in ARM 36.7.2534(1)(b), (2)(g)-(1), and (3)(c)-(e) located within the impact zone specified in (a);

(c) a general assessment of impacts from increased hunting and fishing pressure if increased access to secure habitat would likely occur in the general vicinity of each alternative route because new access roads would be constructed outside the impact zone specified in (a);

(d) a description of the method used to evaluate the impact risk to fisheries, wildlife, and vegetation of the alternative routes; and

(e) documentation that agencies with management responsibility for any affected biological resources have been consulted concerning impacts and mitigation and a description and evaluation of the mitigation measures suggested by these agencies.

(12) Based on the cultural resource overview required by ARM 36.7.2540(8), an application must contain cultural resource data for each alternative route and its impact zones. The impact zones include any lands where construction and operation of the facility, including construction of access roads, may directly affect the integrity of cultural resources and known sites from which the facility would be clearly visible where the values of cultural resources may be significantly affected by the visual presence of the facility. An application must contain the following data:

(a) a detailed description of specific cultural resource properties that may pose problems at the route selection stage, based on the results of an in-depth archival and documentary research effort;

(b) based on the results of (a) and preliminary field checking of impact zones, a discussion of the accuracy of the overview required by ARM 36.7.2540(8) concerning:

(i) site densities and distribution;

(ii) the presence or absence of sites, trails, and properties; and

(iii) site integrity and existing modern intrusions;

(c) for any cultural resource sites or properties identified or more fully defined by the information required by (a) and (b), a discussion, based on consultation with the state historic preservation office, of the potential eligibility of these sites or properties for listing on the national register.

(13) An application must contain an assessment of the potential impacts of the facility on cultural resources for each alternative route. The assessment must address the potential for physical destruction during construction or operation of the facility. Cultural resource-related information required by (9) and (10) will satisfy the visual impact requirements of this subsection. The assessment must include the following:

(a) for each potentially affected cultural resource property or site listed as a sensitive area or as an area of concern by ARM 36.7.2533(2)(h) and (i) and ARM 36.7.2534(2)(m) and (n), and for any properties or sites identified by (12)(c) which may be eligible for listing on the national register, a

discussion of whether the facility would affect the qualities for which these sites or properties were listed or could be listed; and

(b) identification of special construction methods and topographic screening that could eliminate or reduce impacts, and a discussion of the likelihood of success of each measure in reducing impact.

(14) An application must contain the following baseline data concerning recreation areas and sites along each alternative route and their impact zones. The impact zone for recreation is defined by (9), except all recreation areas and sites within one mile of an alternative route for a facility 230 kV or less voltage, and all recreation areas and sites within two miles of an alternative route for a facility greater than 230 kV must be included regardless of whether the facility would be visible from the recreation area or site. Recreation areas and sites are listed in ARM 36.7.2532, ARM 36.7.2533(1)(b)-(e), (2)(f) national natural landmarks where recreation is listed as a current site use, (j), and (l), and by (a) and (b) below.

(a) Based on consultation with appropriate local, state, and federal agencies, an application must include an overlay of any other public or private recreational areas or sites receiving extensive public use such as fishing access areas, public and private campgrounds and ski areas, local parks and picnic areas, located within the impact zones.

(b) An application must contain a list of the recreation areas and sites located within the impact zone for each alternative route cross-referenced to the overlays required by ARM 36.7.2539(3) and (a) and (b) above, a description of each area or site, including any prominent recreational facilities and aesthetic features, a description of how the area or site is used for recreation and, if available, identification of the types of users of the area or site and a use level estimate.

(Annotation: Consult MDFWP and local governments for data.)

(15) An application must contain an assessment of the potential adverse impacts of the facility and access roads on the recreation areas or sites defined by (14) for each alternative route. The requirements of this rule are limited to recreation areas or sites that would be affected by the facility. Information provided in response to (10) concerning aesthetic impacts on recreation areas and sites should be cross-referenced as appropriate. For each recreation area or site that would be affected, an application must contain the following information:

(a) a description of how access to or within each recreation area or site could be affected by adding new or upgrading existing access roads;

(b) a description of how the recreation area or site would be affected including aesthetic impacts of the facility and access roads;

(c) a description of how the facility would be located relative to recreational use of each area or site;

(d) a description of how recreational activities and experiences at each area or site could change as a result of the facility and the potential for use of the area or site to be curtailed or terminated, or for some user groups to be affected more than others;

(e) a description of the relationship of each affected area or site to the local and regional supply of recreation opportunities, including a discussion of whether an affected area or site is unusual or unique in its region by virtue of its providing opportunities unavailable elsewhere;

(f) documentation that agencies with recreation management responsibility for each affected area or site have been consulted concerning the impacts and mitigation, and a description and evaluation of the mitigation measures suggested by the agencies.

(Annotation: Applicants may consult the following in preparing the required information: Driver, B.L., 1976 Quantification of Outdoor Recreationists' Preferences, P. 165-187 in Research Camping and Environmental Education, Betty Van Der Smissen (ed.) Penn State Series II; University Park, PA.; Driver, B.L. and Brown, P.J., 1975, "A Social-Psychological Definition of Recreation Demand, With Implications for Recreation Resource Planning," Appendix A in: Assessing Demand for Outdoor Recreation, U.S. Department of the Interior, Bureau of Outdoor Recreation, Washington, D.C.; Driver, B.L. and Brown, P.J., 1978, "The Opportunity Spectrum Concept and Behavioral Information in Outdoor Recreation and Resource Supply Inventories: A Rationale," In Integrated Inventories of Renewable Natural Resources. U.S.D.A. Forest Service General Technical Report RM-55, Fort Collins, CO.: Rocky Mountain Forest and Range Experiment Station; Clark, R.W. and Stankey, G.H., 1979, The Recreation Opportunity Spectrum: A Framework for Planning Management, and Research, U.S.D.A. Forest Service, General Technical Report PNW-98, Seattle: Pacific Northwest Forest and Range Experiment Station.)

(16) An application must contain an overlay showing, as appropriate and available, the names of perennial streams crossed and their department of health water quality classifications for each alternative route and impact zones as defined by (7).

(Annotation: Consult USGS, MDHES, and ARM 16.20.604-611.)

(17) An application must contain an assessment of potential impacts to water resources, including surface and ground water quality, potential impacts to water users, stream hydrology and stream banks for each alternative route and an impact zone as defined by (7). The assessment must also specifically address any impacts that may occur on municipal watersheds and supplies of potable water.

(18) An application must contain the following baseline data concerning potential noise, radio and television interference and electrical effects of the facility as applicable for each alternative route:

(Annotation: The applicant may cross-reference information provided for the preferred route pursuant to ARM 36.7.3009(6) which addresses these requirements.)

(a) a description of the potential for the facility to induce electrical currents in metal objects on or adjacent to the right-of-way;

(b) an assessment of potential noise impacts of the facility and substations, including an estimate of annual average noise expressed on an A-weighted day-night scale (L_{DN}) at the right-of-way edge for facilities of 230 kV or greater voltage and at the property boundary of all substations located within 500 feet of residences or in subdivided areas. The data on frequency of rain which is necessary to account for wet weather may be obtained from the nearest weather station that has such data available. For purposes of these rules "subdivided areas" shall be defined as a location within which a plat of a subdivision is on file with local governments.

(Annotation: Consult National Academy of Sciences, 1977, "Guidelines for Preparing Environmental Impact Statements on Noise," Report of Working Group 69, Committee on Hearing, Bioacoustics, and Biomechanics, National Research Council, Washington, D.C.; and Environmental Protection Agency, 1974, "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety," EPA 550/9-74-004, Washington, D.C.)

(c) an assessment of the potential impacts of the electrical and magnetic fields generated by the facility;

(d) an assessment of the potential for the facility to cause radio and television interference and interference with any other communication systems;

(e) a description of mitigation measures if necessary to reduce noise, electric and magnetic fields, induced currents, and interference with communication systems.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2545 LINEAR FACILITIES, PIPELINES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT An application for a pipeline must contain baseline data and an assessment of the projected cumulative short and long-term changes and adverse impacts that would result from construction, operation and maintenance of the pipeline for each alternative route and the associated impact zones whose boundaries are specified in the following sections, unless different impact zone boundaries are approved in writing by the department. The applicant must identify general and route-specific mitigation measures to reduce or eliminate these impacts. This information shall serve as a basis for evaluating and comparing alternative routes as required by ARM 36.7.2546 and selecting a preferred route as required by ARM 36.7.2547. Baseline data that require mapping shall be presented on the minimum number of overlays to

the base map required by ARM 36.7.2543(2) that will clearly portray the information. An application must contain the information required by ARM 36.7.2544(1)-(7), (8)(c) and (e), (10), (12), (13), and (15) and the following:

(1) An application must contain the following data relating to the engineering of a facility for each alternative route:

(a) a description of any engineering differences among the alternative routes, if any, relative to their ability to accommodate future pipelines or other linear facilities;

(b) a discussion and appropriate drawings of alternative facility designs and technologies that would be required due to engineering differences among alternative routes, if any;

(c) an overlay showing the locations along each alternative route where the following operations or conditions are expected to occur and a tabulation of the miles of each alternative route that would cross each category:

(i) rock trenching that requires drilling and blasting;

(ii) rock trenching that requires heavy ripping equipment, but not drilling and blasting; and

(iii) cliffs and talus that would constrain construction.

(d) seismic and geologic data sufficient to justify the facility design along any portion of an alternative route that is within one mile of an active fault or in areas of recorded seismic activity with a Richter magnitude greater than 5.5;

(e) a description of the seismic risk associated with each alternative route for the pipeline and for all above-ground associated facilities, based on the potential recurrence, rate, magnitude, and intensity of seismic events as well as ground accelerations and local geologic and soil conditions.

(Annotation: The applicant must develop this information. Guidance can be obtained from Quamar and Breuninger 1979, Northern Tier Report NO. 4, Earthquake Hazard to the Proposed Northern Tier Pipeline in Montana, DNRC. Additional information can be obtained from UM, MSU, USGS and MBMG.)

(2) An application must contain the visual resource information required by ARM 36.7.2544(9), except that the information is required only for exclusion areas and the referenced recreation areas, national register or national register eligible sites, residential areas, and federal and state highways or county roads that are located within 3/4 of a mile and within view of the right-of-way and other pipeline facilities in forested areas along each alternative route. In nonforested areas the application shall contain visual resource information adequate to determine the level of impact.

(3) An application must contain the applicable biological resource information required by ARM 36.7.2535 and ARM 36.7.2544(11) and the following information for each alternative route and the associated impact zones specified below:

(a) a map at a scale of 1:4800 and a minimum resolution of two acres showing existing vegetation community types and land cover, based upon one or two dominant species and one or two

understory species for the following impact zones:

(i) areas within a 0.5-mile radius of pump or compressor stations for pipelines larger than 10" diameter;

(ii) crossings of streams designated class I or II by the Montana department of fish, wildlife and parks and/or of any waterway with an average annual discharge of 1,000 cfs or more;

(b) an overlay to the base map required by ARM 36.7.2543(2) showing migration routes between winter-spring and summer-fall habitat for elk, deer, moose, bighorn sheep, mountain goat and pronghorn that intersect each alternative route and data indicating the timing and use of these migration routes;

(Annotation: Consult MDFWP for data.)

(c) a detailed description of aquatic habitat, fish populations, special use sites such as spawning areas, and angler use for any of the following stream reaches:

(i) a reach of any perennial waterway extending two miles downstream from any trenched pipeline crossing of the stream;

(ii) any additional waters where aquatic habitats could be adversely affected by siltation, sedimentation, or increases in turbidity caused by pipeline trenching or construction adjacent to a perennial stream;

(iii) for liquid product pipelines, any additional waters where aquatic habitats could be adversely affected by a liquid product spill or leak;

(iv) a reach of any stream from which hydrostatic testing water is to be withdrawn, extending 1/4 mile upstream and five miles downstream from the point of withdrawal;

(v) a reach extending 1/4 mile upstream and five miles downstream from any point on any perennial stream where hydrostatic testing discharge water would reach the stream.

(d) for liquid product pipelines, a detailed assessment of the consequences of a spill or leak downstream of each crossing of a perennial waterway, including a description of the principal resources that would be affected, the magnitude of the impact to fishery resources and habitat, and a description of proposed spill detection, containment, and cleanup techniques; and

(e) for any wetlands or other waterfowl habitat downstream from a river crossing that could be adversely affected by a liquid product spill or leak, information on seasonal abundance and species composition of waterfowl populations.

(4) An application must contain a list of the noxious weeds that occur along the alternative routes, an assessment of the impact the facility would have on the dispersion of these weeds, and a description of the weed control measures that would be used to mitigate the impacts.

(5) An application must contain the information on recreation areas and sites required by ARM 36.7.2544(14), except that the impact zone differs and is specified in (2) above.

(6) An application must contain the information on stream locations required by ARM 36.7.2544(16), except that

intermittent waterways that have specific names must also be included.

(7) An application must contain the water resource information required by ARM 36.7.2544(17) and an assessment of stream crossing impacts for each perennial stream crossed by an alternative route, including, but not limited to, estimates of the extent of floodplain disturbance, anticipated stream flow during construction, streambed excavation, and the duration and timing of instream activities.

(Annotation: This information must be developed by the applicant. Consultation with MDNRC prior to data gathering according to ARM 36.7.2404 is advised.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2546 LINEAR FACILITIES, COMPARISON OF ALTERNATIVE ROUTES An application must contain a comparison of the alternative routes which includes the following:

(1) A summary of the most important impacts of the proposed facility for each of the alternative routes, and the impact zones as determined by the baseline study conducted pursuant to ARM 36.7.2544 or ARM 36.7.2545.

(2) A description of the degree to which the most important adverse impacts can be mitigated for each alternative route.

(3) A ranking of the alternative routes from best to worst for each of the following categories, and an indication of the relative differences among the alternatives for each category.

(a) levelized annual costs, including environmental costs and mitigation costs:

(b) reliability;

(c) land use considerations;

(d) socioeconomic considerations;

(e) earth resources;

(f) engineering considerations;

(g) visual resources;

(h) biological resources;

(i) historic, archaeologic and paleontologic resources;

(j) recreation;

(k) water resources; and

(l) any other categories that are important to the applicant.

The applicant may combine or add to the categories as appropriate.

(4) A comparative ranking of the alternative routes from best to worst and an indication of the magnitude of the differences between routes, considering all of the categories listed in (3) consistent with the requirements of ARM 36.7.2547(3).

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.2547 LINEAR FACILITIES, SELECTION OF THE PREFERRED ROUTE The applicant must select a preferred route from the alternative routes selected in accordance with ARM 36.7.2541. An application shall contain a discussion of the rationale used to make the selection, including the following:

(1) The applicant's selection criteria and how they were applied;

(2) An explanation of how the preferred route criteria listed in ARM 36.7.2531(1) or (2) were applied. If weighting of the criteria is used in order to select the preferred route, an application must identify the relative weights given to each criterion and the reasons for assigning each weight.

(3) A discussion of the relative importance of the categories listed in ARM 36.7.2546(3) and identification of any categories that were considered more important than others in selecting the preferred route. An application must clearly explain any weighting system used to portray differences in importance among the categories in selecting the preferred route.

(4) An explanation of how exclusion areas listed in ARM 36.7.2532 were considered in selecting the preferred route.

(5) An explanation of how sensitive areas listed in ARM 36.7.2533 or ARM 36.7.2535 and areas of concern listed in ARM 36.7.2534 or ARM 36.7.2535 were considered in selecting the preferred route.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Sub-Chapters 26, 27, 28, and 29 Reserved.

Sub-Chapter 30
Application Requirements
Facility Description and Design

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36.7.3001 ENERGY GENERATION AND CONVERSION FACILITIES, GENERAL REQUIREMENTS OF THE FACILITY DESCRIPTION AND DESIGN An application for an energy generation or conversion facility must contain an engineering description of the facility in detail sufficient to enable the department to assess the environmental impacts of construction, operation, maintenance, and decommissioning, and to assess reliability and construction and operation costs of the proposed facility at the preferred site as specified in ARM 36.7.3002 - ARM 36.7.3005. These requirements apply specifically to fossil-fueled facilities and other facilities that utilize transportable energy resources. An equivalent description and design is required for all energy generation or conversion facilities defined by 75-20-104(10), MCA. Applicants for energy generation or conversion facilities that employ a nontransportable energy resource must consult with the department concerning facility description and design requirements.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.3002 ENERGY GENERATION AND CONVERSION FACILITIES, DESIGN CHARACTERISTICS (1) An application must include a list of any reports, documents, studies, or calculations that indicate that the preliminary design specifications and performance objectives for the major components or process areas of the facility are adequate and can be maintained in the continuous operation of the facility. Design peak operating volume must be described, including the length of time the various levels of peak operation can be sustained.

(2) An application must identify design features that were selected to reduce adverse environmental impacts.

(3) An application must describe any design features that are oversized to accommodate future increases in plant capacity.

(4) The engineering description required by (1) must include the following major facility components or process areas as applicable: boilers, reactors, generators, condensers, shift conversion facilities, cooling facilities, emission control devices, stacks, and catalyst production and regeneration facilities.

(5) An application must contain a description of associated facilities, including:

(a) transportation systems: a description of any major existing or new transportation system or terminal that would be used during the construction, operation, maintenance or decommissioning of the proposed facility; and an estimate of the type, duration, and intensity of that use;

(b) transmission facilities: a description meeting the requirements of ARM 36.7.3009 and ARM 36.7.3010, for facilities of 230 kV and larger; for facilities smaller than 230 kV, a general description of the components listed in ARM 36.7.3009 is sufficient;

(c) communication installations: microwave towers;

(d) fuel-handling systems: the proposed source of the fuel to be used by the facility and, if applicable, alternative fuel sources consistent with ARM 36.7.2515(8) and a description of equipment and portions of the site that will be used to store, prepare and transfer the fuel to the point of consumption;

(e) water-supply systems: all sources of water to be used by the facility, structures that would pump, convey, store, or treat the water, proposed drainage or flood control structures, and a description of the processes used to deliver water to and discharge water from the site, including operation and monitoring plans for water-supply reservoirs, ponds, and other diversions for municipal or industrial use;

(f) waste-handling systems: all waste-handling systems, both on and off-site, including a description of the collection, storage, treatment, disposal processes and monitoring procedures and plans for each system, consistent with the requirements of ARM 36.7.3003(5) ("Operation and Maintenance Analysis"); and

(g) any other permanent structures or installations, and temporary structures or installations that would be used only during the construction phase.

(6) An application must contain a topographic map at a scale of 1:4800 showing the proposed location of all facility structures and nonlinear associated facilities at or associated with the preferred site.

(Annotation: This requirement applies to off-site associated facilities, such as water storage projects constructed to serve a proposed facility.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.3003 ENERGY GENERATION AND CONVERSION FACILITIES, CONSTRUCTION DESCRIPTION (1) An application must include a preliminary construction schedule and description of typical equipment, and a description of the sequential steps involved in carrying out major construction activities, including site preparation and an estimate of the amount of ground disturbance. The schedule must include associated facilities and relocations or development of transportation and other public use facilities necessitated by project construction, and methods of maintaining service during these activities.

(2) An application must contain a description of the following:

(a) plans for construction camps for the crew, if any, and any other temporary facilities used during construction;

(b) the methods the applicant will use to reclaim any temporary facilities;

(c) a schedule showing the anticipated timing of activities; and

(d) methods the applicant will use for fire control.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.3004 ENERGY GENERATION AND CONVERSION FACILITIES, OPERATION AND MAINTENANCE ANALYSIS (1) An application must contain a general description of operation and maintenance of the proposed facility under normal conditions, including types and scheduling of expected maintenance and inspections.

(2) An application must contain a discussion of the ability of the proposed facility to withstand possible destructive natural phenomena such as earthquakes, floods, and accidents; equipment malfunction or failure; a description of structural problems, and safety problems, or adverse environmental effects that may result from facility failure due to natural phenomena or accidents, and design features that will be incorporated or contingency measures that will to be taken to reduce the problems.

(3) An application must discuss the environmental effects, if any, of operating the facility at less than full capacity, including effects on the operation of associated facilities and the resulting effects on air and water quality due to changes in the levels or composition of emissions and waste streams.

(4) An application must contain a descriptive analysis of materials such as air, water, coal and chemical compounds that would flow into the proposed facility, including an analysis of fuel materials used for start-up of the facility. The analysis must include at least the following:

(a) consumption rate;

(b) detailed chemical and radiological content of all input materials;

(c) heat content of fuel materials; and

(d) material and energy flow diagrams, including heat and radiant energy flows, to illustrate the path of major materials through the facility, qualitatively and quantitatively.

(5) An application must contain a qualitative and quantitative analysis of all materials that are projected to flow out of the facility. The analysis must include detailed chemical content of all output material based on the best information available, including material with radiological content. The method of using, treating, dispersing and disposing of materials in each of the following categories shall be discussed, including the method of monitoring the use, treatment, dispersal, disposal and ultimate reclamation of waste sites, as applicable, for each of the following categories:

(a) products and by-products such as gas and hydrocarbon liquid;

(b) waste materials; including gases, liquids, and solids;

(c) energy forms such as heat that escape during processing; and

(d) for coal conversion facilities which are proposed to produce more than one major product, the capability for alternative fuels production or capacity to alter the product mix of facility outputs.

(6) An application must contain an estimate of the on-line life of the facility and the projected operating capacity during the on-line life.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.3005 ENERGY GENERATION AND CONVERSION FACILITIES, DECOMMISSIONING METHODS An application must contain a description of the projected method and environmental effects of decommissioning the proposed facility at the end of its useful life, or explain why decommissioning the facility is not foreseen.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Rules 36.7.3006 - 36.7.3008 Reserved

36.7.3009 LINEAR FACILITIES, DESIGN CHARACTERISTICS (1) An application must contain an engineering description of the facility in detail sufficient to enable the department to assess the environmental impacts of construction, operation and maintenance and reliability of the proposed facility located on the preferred route.

(Annotation: The engineering description of the proposed facility is based on the applicant's preferred route. ARM 36.7.2543 and 36.7.2544 contain environmental impact analysis requirements. The description of the facility must be in sufficient detail to allow this analysis to be conducted.)

(2) An application must contain a list of any reports, documents, studies, or calculations indicating that the preliminary design specifications and performance objectives for the major components of the facility are adequate and can be maintained in the continuous operation of the facility.

(3) An application must identify facility design features that were selected in order to reduce adverse environmental impacts.

(4) For an electric transmission facility, an application must contain an engineering description of major facility components, including the following: structure design and materials; height range of structures; approximate number of structures per mile; ground wire configurations; types and designs of markers and other warning devices; number and spacing of conductors; and location, size, and overall plan of new and modified substations, including present and future land requirements.

(5) For an electric transmission facility, an application must contain specifications for design peak voltage and amperage under adverse climatic conditions and under expected peak loading conditions.

(6) For an electric transmission facility, an application must include an estimate of radio and television interference, and electric and magnetic field strengths. This information on electric and magnetic fields must be provided for cross-sections of the right-of-way and must include maximum conditions under the conductors and at the edge of the

right-of-way or easement, and attenuation rates beyond the edge of the right-of-way. This information is also required at the property boundaries surrounding each substation which is proposed to be located in residential or subdivided areas and must include estimates of attenuation rates beyond the property boundaries.

(7) For an electric transmission facility, an application must contain a statement certifying that the facility will meet the standards of the national electric safety code.

(8) For pipelines, an application must contain an engineering description of the facility, including conduit size and thickness, tensile strength, test and operating pressure, methods of joining sections of conduit, trenching depth, amount of ground cover over the pipeline, the location, size and overall plan for new or modified pumping and compressor stations, cathodic protection systems, and other safety features. Facility design specifications or criteria must also be provided for the normal and maximum transmitting or pumping capacity and pressure of compressor stations and pump stations.

(9) For pipelines, an application must contain a description of quality control and testing procedures and the information necessary to demonstrate that the facility can meet industry and U.S. department of transportation pipeline standards.

(Annotation: Consult Code of Federal Regulations, Title 49, Parts 191, 192 and/or 195, as appropriate, and the American National Standards Institute, or the American Petroleum Institute.)

(10) A specific engineering or design explanation of the opportunities and constraints for paralleling or sharing existing utililty or transportation rights-of-way, or portions thereof, and if such opportunities were not chosen for part of the preferred route, an explanation of the reasons, including insufficient right-of-way and/or other land use constraints.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.3010 LINEAR FACILITIES, ELECTRIC TRANSMISSION FACILITIES, CONSTRUCTION DESCRIPTION (1) An application must contain a preliminary construction schedule, a description of typical construction equipment to be used, and a description of the steps involved in carrying out major construction activities, including plans for and use of staging areas, right-of-way clearing, access road construction, structure assembly, and conductor and sock line stringing.

(2) An application must contain an estimate of the amount of ground disturbance resulting from construction at a representative structure site, pulling site, and reel site.

(3) An application must contain a description of the types and sizes of roads needed to build and maintain the facility.

(4) An application must contain estimates of the minimum and maximum right-of-way widths for which permanent easements

would be purchased for the cleared right-of-way, estimates of the minimum and maximum widths of any additional construction easements, a description of the criteria used to determine right-of-way widths, a description of any land use restrictions that would be placed on the permanent easement, and a general description of standard conditions in the easement agreement pertaining to protection of the facility from damage or pertaining to public safety and liability.

(5) An application must contain a description of the camps planned for the construction crew, if any, and how they will be operated.

(6) An application must contain a description of the reclamation methods the applicant will use and the scheduled timing of activities proposed to restore the right-of-way.

(7) An application must contain a description of methods the applicant will use for fire control.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.3011 LINEAR FACILITIES, PIPELINE FACILITIES, CONSTRUCTION DESCRIPTION (1) An application must contain a preliminary construction schedule, a description of typical construction equipment to be used, an estimate of total equipment needs and a description of sequential construction operations, such as right-of-way clearing, trenching, pipe installation and backfilling, including estimates of the duration and length in miles of each operation and a description of plans for and use of staging areas.

(2) An application must contain an estimate and discussion of the width of the level work pad needed for construction operations.

(3) An application must contain an estimate of the area of ground disturbance resulting from construction activities, including an estimate of mileage of flat terrain where no cut and fill excavation would be needed and estimates of mileage of terrain where cut and fill excavation to construct a level work pad would be required.

(4) An application must contain a description of the types and sizes of roads needed to build and maintain the facility, an estimate of the road mileage and preliminary road locations required in addition to the right-of-way, if any, in order to construct the facility on the applicant's preferred route, and an estimate of how much the roads will be used.

(5) An application must contain a description of the minimum and maximum construction right-of-way widths and the widths of permanent easements, a description of the criteria used to determine the widths, and a description of any land use restrictions that would be placed on the permanent easement.

(6) An application must contain a discussion of the proposed and alternative methods of trenched stream crossings, including specification of equipment types, estimates of the width and depth of trenching, and estimates of the scour depth supported by a discussion of the methods and calculations used to make the estimates.

(7) An application must contain a discussion of the proposed and alternative methods of and conceptual designs for overhead stream crossings, if any.

(8) An application must contain a description of the camps planned for the construction crew, if any, and how they will be operated.

(9) An application must contain a description of the reclamation methods that will be used to restore the right-of-way, including a description of the proposed method for segregating topsoils from the remaining excavated material on sidehills and over the ditch.

(10) An application must contain a description of methods the applicant will use for fire control.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.3012 LINEAR FACILITIES, OPERATION AND MAINTENANCE DESCRIPTION (1) An application must include a description of operation and maintenance procedures for the proposed facility under normal and emergency conditions, including types and scheduling of anticipated maintenance and inspections. For electric transmission facilities, an application must contain a description of methods the applicant will employ to resolve complaints from nearby residents regarding noise and radio and television interference.

(2) An application must contain a discussion of the ability of the proposed facility to withstand destructive natural phenomena such as mass movement, earthquakes, floods, icing conditions and high winds or accidents, a description of the environmental impacts and/or public safety problems resulting from facility failure due to natural phenomena and accidents, and a general discussion of measures proposed to reduce the problems.

(3) An application must contain a description of the methods the applicant will employ to control land uses on the right-of-way, including encroachment of buildings.

(4) An application must contain a description of the right-of-way management procedures that will be used, including vegetation and weed control, herbicide use, and the scheduled timing of the proposed management activities.

(History: Sec. 75-20-105, MCA; IMP, 75-20-211, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Sub-Chapters 31, 32, 33, and 34 Reserved

Sub-Chapter 35
Decision Standards

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36.7.3502 ENERGY GENERATION AND CONVERSION FACILITIES, SERVICE AREA UTILITIES, NEED STANDARD In order to find that there is a need for an energy generation or conversion facility, as required by 75-20-301(2)(a), MCA, that is proposed by a service area utility as defined by ARM 36.7.1501, the board must find that the output of the facility is needed by finding and determining either:

(1) That the full output of the facility will be used to balance firm loads and firm resources within the applicant's service area(s) during at least one of the five years following the date the proposed facility is to be placed in service, and will continue to be so used for the remainder of the forecast period. This finding is based on a comparison of the most likely load growth forecast scenario required by (a) with the resource forecast required by (b). In making this finding the board shall:

(a) Adopt a forecast of energy and peak load growth in the applicant's service area. In addition to the geographic territories that have historically constituted the service area, other areas may be added to the extent that firm sales for resale have been contractually made prior to the date of application for the proposed facility, providing that such sales for resale are continuing to be contractually served as of the date of application and there is no reason to expect the sales will not be continuing at the time the facility is expected to come on-line.

(i) The load growth forecast must explicitly indicate the degree of uncertainty in the forecast assumptions by providing a reasonable range of forecast scenarios using alternate sets of assumptions.

(ii) The load growth forecast must distinguish firm and interruptible capacity loads and firm and curtailable energy loads.

(iii) The load growth forecast must be based on an analysis of price and economic and demographic factors affecting load growth, unless the board finds that these factors are not significant determinants of load growth.

(iv) The load growth forecast must include sales by sector of demand, system losses and internal use by the applicant.

(b) Adopt a resource forecast for the applicant's service area showing the existing and permitted resources that could be used to serve loads in the service area.

(i) The resource forecast must include generation or conversion and energy conservation resources.

(ii) The resource forecast must include owned resources, shares of partially-owned resources, contracted purchases and other transfers and trades.

(iii) The resource forecast must indicate planned retirements, downratings and upratings of existing generation facilities.

(iv) The resource forecast must distinguish firm energy and nonfirm energy.

(v) The applicant's firm energy resources shall be evaluated as follows:

(A) hydroelectric plants: at median water and critical water. Critical water can be determined using the guidelines in section 2, part 1, of the agreement for coordination of operations among power systems of the pacific northwest, contract no. 14-02-9822, as modified, if relevant by the northwest power planning council or for hydroelectric plants not covered by the above contract, as determined by the board based on the record;

(B) coal plants: 70 percent annual capacity factor;

(C) nuclear plants: 70 percent annual capacity factor unless the board shall determine another value based on the record;

(D) oil-fired and gas-fired plants existing as of September 1980: 25 percent annual capacity factor or as limited by permit, unless exemptions are granted under the fuel use act of 1978, or unless the fuel use act is amended to permit higher levels of use;

(E) oil-fired and gas-fired plants proposed after September 1980: 17 percent annual capacity factor, unless exemptions are granted under the fuel use act of 1978, or unless the fuel use act is amended to permit higher levels of use; and

(F) all others: as specified by contract, or if not governed by contract, a documented estimate shall be used.

(2) If the finding required by (1) cannot be made, that the expected benefits of constructing a facility of the size proposed, warrant the resource commitment, based on a finding and determination of the following:

(a) the benefits associated with constructing a facility of the size proposed, as opposed to a facility for which the finding required by (1) can be made;

(b) the likely market for and price of the output to be produced in excess of that which would be used in the applicant's service area; and

(c) the degree of uncertainty surrounding the benefits found in (a) and the markets found in (b).

(History: Sec. 75-20-105, MCA; IMP, 75-20-301, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.3503 ENERGY GENERATION AND CONVERSION FACILITIES, COMPETITIVE UTILITIES, NEED STANDARD In order to find that there is a need for an energy generation or conversion facility, as required by 75-20-301(2)(a), MCA, that is proposed by a competitive utility as defined by ARM 36.7.1501, the board must find that the output of the facility is needed, by finding and determining either:

(1) That the energy from the facility will be marketable at a price that will recover the direct unit costs of production within five years after the facility is to be placed in service; or

(2) If the finding required by (1) cannot be made, that the expected benefits to the applicant and to the state of Montana warrant the resource commitment by the applicant and the state, based on a finding and determination of the following:

(a) the date that the energy will be marketable at a price that will recover the direct unit costs of production;

(b) the length of time, and the cumulative financial shortfall from the time the facility is placed in service, until the energy can be sold at a price that recovers the full unit cost of production;

(c) the sufficiency of the applicant's financial resources to cover the financial shortfall;

(d) the amount of assistance, if any, likely to be required during the period the facility is operating at a loss;

(e) The likelihood that required assistance identified in (d) will be available; and

(f) The resource commitment of the applicant and the State of Montana if the assistance identified in (d) is not forthcoming.

(History: Sec. 75-20-105, MCA; IMP, 75-20-301, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.3504 ENERGY GENERATION AND CONVERSION FACILITIES, MINIMUM IMPACT STANDARD In order for the board to find that an energy generation or conversion facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives as required by 75-20-301(2)(c), MCA:

(1) The board must find and determine:

(a) That the facility will result in lower delivered cost of energy to customers than any other reasonable alternative identified and characterized in ARM 36.7.2401 and ARM 36.7.2402 that is relevant to the proposed facility, or if the board finds that another alternative would result in lower delivered costs of energy to consumers, that the advantages of the proposed facility outweigh the additional costs to consumers.

(b) That the net present value of costs, including monetary costs of construction, operation, and mitigation to the applicant, external monetary costs, and the value of reasonably quantifiable unmitigated environmental impacts is lower for the proposed facility than for other alternatives. Other available alternatives include alternative energy resources, alternative technologies, alternative sizing and timing of facilities, nonconstruction alternatives, and the no action alternative. The cost of the no action alternative includes, if relevant, the costs to consumers of being deprived the output of the facility and of having to obtain the energy or product of the facility from other sources.

(i) Full consideration must be given to alternative sources of energy and energy conservation as specified in 75-20-503(1), MCA. These may include some alternatives that were not considered by the applicant.

(Annotation: Alternatives that must be considered here are the same for service area utilities, competitive utilities, and nonutilities. For the latter groups the board must consider some alternatives available to serve consumers but possibly not available to the applicant, such as conservation and supplying

consumers with surplus energy from another source instead of producing it at the proposed facility.)

(c) That unquantified environmental impacts are not significantly adverse to alter the finding required by (b).

(d) That all mitigation measures included in the mitigation plan in (h) have been incorporated in the cost finding required by (b).

(e) That the site for the facility achieves the best balance among the preferred site criteria listed in ARM 36.7.2502 considering environmental impact and economic cost.

(f) That the facility will not be located in one of the exclusion areas listed in ARM 36.7.2503.

(g) That reasonable alternative locations for the facility were considered in selecting the site pursuant to ARM 36.7.2506, ARM 36.7.2508, ARM 36.7.2510 and ARM 36.7.2513.

(h) That the site for the facility will result in less cumulative adverse environmental impact and economic cost than siting the facility at alternative sites, based on the following:

(i) identification of any probable significant adverse environmental impacts;

(ii) identification of reasonable mitigation for these significant adverse impacts;

(iii) adoption of an acceptable mitigation plan based on measures identified in (ii) including environmental specifications that will be included in conditions to the certificate; and

(iv) adoption of an acceptable monitoring plan, including a reclamation plan that will be included in conditions to the certificate.

(i) If in making the finding required by (h), the site for the facility will be located in one or more of the sensitive areas listed in ARM 36.7.2504 or the areas of concern listed in ARM 36.7.2505, either that no significant adverse impacts would result in the areas, or

(i) that any significant adverse environmental impacts affecting the environmental resources, qualities or characteristics for which the sensitive areas or areas of concern are designated have been identified;

(ii) that mitigation found reasonable by the board for these significant adverse impacts, if any, has been identified;

(iii) that a mitigation plan acceptable to the board based on the measures identified in (ii), including environmental specifications, has been identified and will be included in conditions to the certificate; and

(iv) that a monitoring plan acceptable to the board, including a reclamation plan, has been identified and will be included in conditions to the certificate.

(j) that a corridor (corridors) for any linear associated facility (facilities) has (have) been identified, that an acceptable time period for selection of a centerline within the corridor (corridors) has (have) been specified, and that the corridor (corridors) is (are) of sufficient width to permit the applicant to propose and the board to find and determine an

acceptable centerline (centerlines) pursuant to the requirements of ARM 36.7.4001 - ARM 36.7.4006 (centerlines) and the findings required by ARM 36.7.3508.

(2) The board shall condition its approval of a facility on the following standards:

(a) average noise levels, as expressed by an A-weighted day-night scale, must not exceed 55 decibels at the property boundary of the site in residential or subdivided areas;

(b) the facility must comply with environmental specifications developed for the facility; and

(c) any other standards the board deems important must be met.

(History: Sec. 75-20-105, MCA; IMP, 75-20-301, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.3505 ALL FACILITIES, UTILITIES, PUBLIC INTEREST, CONVENIENCE AND NECESSITY STANDARD (1) In order for the board to find that a proposed facility will serve the public interest, convenience and necessity as required by 75-20-301(2)(g), MCA the board must find and determine that the discounted net present value of benefits (less costs) is greater for the facility than for any other reasonable alternative, based on a determination of the following:

(a) the findings required by ARM 36.7.3502 or ARM 36.7.3503;

(b) the cumulative environmental impacts of the facility, as determined for ARM 36.7.3504(h);

(c) the benefits to the applicant, the state of Montana, the applicant's customers, and any other entities benefitting from the facility;

(i) benefits include internal benefits and external benefits; nonmonetary benefits must be quantified to the extent reasonably possible.

(d) the effects of the economic activity resulting from the proposed facility;

(e) the costs of the facility including internal costs of construction and operation and mitigation costs, plus other external costs and unmitigated environmental costs; nonmonetary costs must be quantified to the extent reasonably possible; and

(f) any other factors the board considers relevant.

(2) In making this finding the board shall consider the effects of the facility on the public health, welfare and safety.

(History: Sec. 75-20-105, MCA; IMP, 75-20-301, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

ARM 36.7.3506 ELECTRIC TRANSMISSION LINES, SERVICE AREA UTILITIES, NEED STANDARD In order to find that there is a need for an electric transmission facility as required by 75-20-301(2)(a), MCA, that is proposed by a service area utility as defined by ARM 36.7.1501, the board must find that the services of the facility are needed by finding and determining the following:

(1) For facilities for which insufficient power transfer capacity at adequate voltage levels under normal operating conditions is a stated basis of need in the application, either that:

(a) the transfer capacity of the proposed facility will be required within two years of the date the proposed facility is to be placed in service; or

(b) if the finding in (a) cannot be met, that the expected benefits of constructing a transmission line with the transfer capacity of the proposed line, instead of one for which the finding in (a) can be met, warrant the resource commitment, based on a finding and determination of the following:

(i) the expected benefits of building the proposed line compared with one that would satisfy (a); and

(ii) the extra costs of building the proposed line compared with one that would satisfy (a).

(2) For facilities for which insufficient power transfer capacity at adequate voltage levels under contingent operating conditions is a stated basis of need in the application, that:

(a) there is or will be a power transfer capacity shortage under contingent conditions that will be rectified by the proposed facility within two years of the date the proposed facility is to be placed in service; and

(b) the contingent conditions under which existing transfer capacity is insufficient, are sufficiently likely to occur to give a reasonable assurance that the expected benefits of the proposed facility exceed the costs of the facility.

(3) For facilities for which transient stability under normal operating conditions is a stated basis of need in the application, that there is or will be a transient stability problem under normal operating conditions, that will be rectified by the proposed facility within two years after the date the proposed facility is to be placed in service.

(4) For facilities for which transient stability under contingent operating conditions is a stated basis of need in the application, that:

(a) there is or will be a transient stability problem under contingent operating conditions that will be rectified by the proposed facility within two years of the date the proposed facility is to be placed in service; and

(b) the contingent conditions under which the transient stability problems arise are sufficiently likely to occur to give a reasonable assurance that the expected benefits of the proposed facility exceed the costs.

(5) For facilities for which excessive voltage drop under normal operating conditions is a stated basis of need in the application, that:

(a) there is, or will be within two years after the proposed facility is to be placed in service, an excessive voltage drop that will be rectified by the proposed facility; and

(b) the applicable design or operating voltage drop criteria used to justify the proposed facility are reasonably likely to result in benefits in excess of costs.

(6) For facilities for which excessive voltage drop under contingent operating conditions is a stated basis of need, that:

(a) there is or will be within two years after the proposed facility is to be placed in service a problem of excessive voltage drop under contingent operating conditions which will be rectified by the proposed facility; and

(b) the applicable design or operating voltage drop criteria and the expected frequency and duration of the contingent operating conditions under which the problem exists are such as to give a reasonable assurance that the expected benefits of the proposed facility exceed the costs of the facility.

(7) For facilities for which reliability of service is a stated basis of need in the application:

(a) that the reliability criteria of the applicant will be violated within two years of the date the proposed facility is to be placed in service if the proposed facility is not built or some other solution is not implemented; and

(b) that the value of the savings from reduced outage plus any value for general reliability of service, over the life of the facility, is reasonably likely to exceed the cost of the proposed facility.

(8) For facilities for which economy considerations are a stated basis of need:

(a) that the expected benefits of the proposed facility exceed the costs of the facility, given:

(i) the difference between expected system costs with and without the line;

(ii) the expected location and size of markets and price for surplus power; and

(iii) the expected source, quantity and price of purchased economy energy; and

(b) that the benefits of the line warrant the resource commitment associated with it given the degree of uncertainty surrounding the benefits, likely markets, and economy purchases identified in 8(a); and

(c) if transmission capacity exists that could carry the desired energy power flow without violating voltage drop, transfer capacity or other transmission planning criteria, that:

(i) the existing capacity is not available to the applicant at reasonable cost;

(ii) the applicant has made every reasonable effort to reach agreement with the owners of the existing capacity;

(iii) no agreement has been reached with the owners of the existing capacity; and

(iv) no means exist for reaching a reasonable agreement with the owners of the existing capacity or for otherwise gaining access at reasonable terms to the existing capacity.

(9) For all facilities, that any forecast of loads is consistent with available information about loads and load growth in the area to be served by the proposed facility.

(History: Sec. 75-20-105, MCA; IMP, 75-20-301, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.3507 LINEAR FACILITIES, MINIMUM IMPACT STANDARD In order for the board to find and determine that a linear facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives as required by 75-20-301(2)(c), MCA:

(1) The board finds and determines:

(a) that the expected net present value of costs, including monetary costs of construction to the applicant, external monetary costs, and the value of reasonably quantifiable environmental impacts is lower for the proposed facility than for any other available alternative that would meet the need finding required by ARM 36.7.3506(1). Other available alternatives include transmission alternatives, alternative energy resources and energy conservation, alternative transmission technologies, alternative levels of transmission reliability and the no action alternative;

(b) that unquantified environmental impacts are not significantly adverse to alter the finding required by (a);

(c) that all mitigation measures included in the mitigation plan in (g) have been incorporated in the cost finding required by (a);

(d) that the route for the facility achieves the best balance among the preferred route criteria listed in ARM 36.7.2531 considering environmental impact and economic cost;

(e) that the route for the facility will not cross one of the board's designated exclusion areas listed in ARM 36.7.2532;

(f) that reasonable alternative locations for the facility were considered in selecting the route, pursuant to ARM 36.7.2536, ARM 36.7.2538, and ARM 36.7.2541;

(g) that the route for the facility will result in less cumulative adverse environmental impact and economic cost than siting the facility on any reasonable alternative route, based on the following:

(i) identification of any probable significant adverse environmental impacts;

(ii) identification of reasonable mitigation for these significant adverse environmental impacts;

(iii) adoption of an acceptable mitigation plan based on the measures identified in (ii), including environmental specifications, that will be included in conditions to the certificate; and

(iv) adoption of an acceptable monitoring plan, including a reclamation plan, that will be included in conditions to the certificate.

(h) If in making the finding required by (g), the route for the facility crosses one or more of the sensitive areas listed in ARM 36.7.2533 or ARM 36.7.2535, or the areas of concern listed in ARM 36.7.2534 or ARM 36.7.2535, either that no significant adverse environmental impacts would result in the area(s); or

(i) that any significant adverse environmental impacts affecting the environmental resources, qualities or characteristics for which the sensitive areas or areas of concern are designated have been identified;

(ii) that reasonable mitigation for these significant adverse environmental impacts has been identified;

(iii) that an acceptable mitigation plan based on the measures identified in (ii), including environmental specifications, has been identified and will be included in conditions to the certificate; and

(iv) that an acceptable monitoring plan, including a reclamation plan, has been identified, and will be included in conditions to the certificate.

(i) that the route for the facility is of sufficient width to permit the applicant to propose and the board to find and determine an acceptable centerline pursuant to the requirements of ARM 36.7.4001 - ARM 36.7.4006 of this chapter and the findings required by ARM 36.7.3508.

(2) The board must condition its approval of a facility on the following standards:

(a) for electric transmission facilities, that average annual noise levels, as expressed by an A-weighted day-night scale (L_{DN}) will not exceed:

(i) 50 decibels at the edge of the right-of-way in residential and subdivided areas unless the affected landowner waives this condition;

(ii) 55 decibels at the edge of the property boundaries of substations in residential and subdivided areas.

(b) for electric transmission facilities, that appropriate mitigation has been identified to prevent unacceptable interference with stationary radio, television, and other communication systems and will be included in conditions to the certificate;

(c) for electric transmission facilities, that the facility will adhere to the national electric safety code regarding transmission lines.

(d) for electric transmission facilities, that the electric field at the edge of the right-of-way will not exceed one kilovolts per meter measured one meter above the ground in residential or subdivided areas unless the affected landowner waives this condition, and that the electric field at road crossings under the facility will not exceed seven kilovolts per meter measured one meter above the ground.

(e) for electric transmission facilities, that the facility will comply with the identification and marking standards established by the federal aviation administration.

(f) for pipeline facilities, that compliance with applicable U.S. department of transportation pipeline standards will be achieved.

(g) for all linear facilities, that the facility will comply with environmental specifications developed for the facility.

(h) for all linear facilities, that the location of the centerline within the approved route is subject to final approval by the board.

(i) for all linear facilities, that the applicant shall submit a centerline application pursuant to ARM 36.7.4001 - ARM 36.7.4006 within one year of the board's granting a certificate.

(j) for all linear facilities, that any other standards the board deems important will be met.

(History: Sec. 75-20-105, MCA; IMP, 75-20-301, and 75-20-503, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.3508 LINEAR FACILITIES, MINIMUM IMPACT STANDARD FOR CENTERLINES Pursuant to ARM 36.7.4001, a linear facility may not be constructed until the board has approved a centerline within the approved route or, in the case of a linear associated facility, within the approved corridor. In order for the board to find and determine that a centerline for a linear facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives as required by 75-20-301(2)(c), MCA, the board must make the findings required by ARM 36.7.3507 for the centerline.

(History: Sec. 75-20-105, MCA; IMP, 75-20-301, and 75-20-302, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Sub-Chapters 36, 37, 38, and 39 Reserved

Sub-Chapter 40
Centerlines for Linear Facilities and Associated Facilities

Rule Number	Title	Page
36.7.4001	Conditional Approval of Routes or Corridors.	159
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36.7.4001 CONDITIONAL APPROVAL OF ROUTES OR CORRIDORS (1) Any certificate granted to build a linear facility in an approved route or a linear associated facility in an approved corridor is subject to final approval of the location of the centerline by the board. Unless a certificate states otherwise, a certificate holder may not begin building a linear facility or linear associated facility without having obtained the board's approval of the centerline.

(2) The precise boundaries of an approved route or approved corridor shall be delineated by lines approximately one millimeter wide on USGS topographic maps at a scale of 1:24,000 or USGS maps preliminary to the published 7.5 minute quadrangle maps. Where these are not available, USGS advance or final 7.5 minute orthophoto quad maps shall be used. Where none of these maps are available, USGS 15 minute topographic maps or the best available published maps with a scale of 1:125,000 or 1:100,000 shall be photographically enlarged to 1:24,000. As appropriate, the map may be derived from the base map submitted with the application, ARM 36.7.2543(2), or derived from an accurate overlay of it. The route or corridor may be described according to bearing descriptions, range, township and section numbers. The map and, if applicable, the route or corridor description, shall be part of the certificate granted by the board.

(3) The procedural requirements of the centerline evaluation for a linear facility or a linear associated facility shall be specified in the certificate.

(4) The costs incurred by the department and board in evaluating and approving the centerline shall be reimbursed by the filing fee or by contract between the applicant and the department.

(History: Sec. 75-20-105, MCA; IMP, 75-20-301, and 75-20-302, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.4002 CENTERLINE EVALUATION IN AN APPROVED ROUTE OR CORRIDOR--GENERAL REQUIREMENTS (1) The centerline evaluation is required to select a centerline for the linear facility in the approved route or the linear associated facility in the approved corridor that will result in less cumulative adverse environmental impact and economic cost than siting the facility on any alternative centerline.

(2) Centerlines shall not cross sensitive areas or areas of concern specified by ARM 36.7.2533 and ARM 36.7.2534 or ARM 36.7.2535, unless the certificate holder can demonstrate that no significant adverse environmental impacts are likely to result, or that mitigation of significant adverse environmental impacts is possible, or unless siting the facility in or through a sensitive area or area of concern would result in less cumulative adverse environmental impact and economic cost, including the cost of mitigation, than siting the facility in an alternative location.

(History: Sec. 75-20-105, MCA; IMP, 75-20-301, and 75-20-302, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.4003 ELECTRIC TRANSMISSION LINES, CENTERLINE EVALUATION IN AN APPROVED ROUTE, INFORMATION REQUIREMENTS The certificate holder shall prepare and submit the following information for its preferred centerline and any alternative centerlines that may be identified by the certificate holder pursuant to conditions in the certificate after study of the approved route. Upon request of the department, the certificate holder shall submit the following information on alternative centerlines identified by the department. The certificate holder may cross-reference any information required by ARM 36.7.2530 - ARM 36.7.2547 that was supplied in the application and that meets any of the following requirements.

(1) The certificate holder shall submit to the department a base map of the approved route which shall be derived from the base map submitted with the application and described in ARM 36.7.2543(2), or, as appropriate, be derived from the map contained in the certificate and described in ARM 36.7.2546(2). The base map must contain the following information:

(a) the boundaries of the route approved by the board;

(b) an overlay to the map of any sensitive areas or areas of concern listed in ARM 36.7.2533 - ARM 36.7.2534 that are located within the approved route; and

(c) an overlay showing the boundaries and ownership of parcels of land 10 acres or more in size within the route.

(2) The certificate holder shall accurately depict to within 250 feet, unless otherwise specified by the board in the certificate, a preferred centerline on an overlay to the base map required by (1). The centerline need not be surveyed unless specified by the board in the certificate, but the applicant shall by reasonable effort, such as ground and/or aircraft inspection, determine the suitability of the location for a facility. The certificate holder shall also submit to the department the following information:

(a) a list of all landowners within 1/4 mile of the preferred centerline, their addresses, and telephone numbers;

(b) locations of alternative centerlines or portions of alternative centerlines identified by the applicant or by the department, as appropriate. Alternative centerlines shall be depicted with the same accuracy as the preferred centerline;

(c) preliminary locations for all access roads that would be required to construct and operate the facility along the preferred centerline and any alternative centerlines delineated by lines approximately one millimeter wide on an overlay to the base map required by (1); additions to the base map required by (1) shall be provided as necessary to include any access roads that may be located outside the boundaries of the route approved by the board;

(d) tentative locations of all structures that would be built in sensitive areas, areas of concern or areas where public concerns about the facility have been expressed;

(e) documentation that landowners whose property would be crossed by the preferred or alternative centerline and/or their associated access roads have been contacted or if a landowner could not be contacted that a reasonable effort was made to contact him; and

(f) a summary of any landowner, general public and government agency concerns or environmental issues or problems identified by the certificate holder and the mitigation measures the certificate holder proposes to address these concerns.

(3) An overlay to the base map required by (1) showing individual residences and major farm support buildings within 1/2 mile of each alternative centerline, and a numerical tabulation of the data, cross-referenced appropriately to the overlay and separated into categories of structures located within one-fourth and one-half mile of the centerline.

(4) For areas identified by the department and areas where public concerns have been expressed, an overlay to the base map required by (1) showing all fence lines 1/4 mile or greater in length and an overlay showing mechanically irrigated farm land;

(5) For any preliminary access road locations that are identified pursuant to (2)(c), refinements of the earth resource information required by ARM 36.7.2544(7) and the water resource information required by ARM 36.7.2544(16) and (17).

(6) Identification and supporting documentation of any specific problems or concerns associated with crossings of streams and highways as determined through consultation with the Montana department of fish, wildlife and parks and the Montana department of highways.

(7) For any exclusion areas, recreation areas, national register or national register eligible sites, residential areas, state and federal highways or county roads referenced in ARM 36.7.2544(9) that are within one mile of the preferred and alternative centerlines and have been specified by the department, the certificate holder shall submit the following visual resource information:

(a) identification and mapping of key observation points; where one or more of the areas referenced above are in close proximity and would have similar views of the proposed facility, a representative observation point may be designated;

(b) identification and mapping of areas where the facility would be visible from appropriately grouped observation points;

(c) a description and evaluation of viewer characteristics including proximity to the alternative centerlines, orientation, number of viewers, and duration of view; where a characteristic does not warrant differentiation, the certificate holder shall provide the reasons;

(d) a description and evaluation of the compatibility of the proposed facility with the viewed area of the landscape;

(e) a description and categorization of levels of sensitivity, the relative degree of viewer interest in the visual resource;

(f) one or more photographs taken from selected observation point(s) toward the alternative centerlines, sufficient to show the full range of view characteristics, with a description of pertinent information from (c),(d) and (e) accompanying each photograph;

(g) integration of the information gathered in (a) through (f) and any appropriate information required by ARM 36.7.2544(9) and (10) to predict and compare impact levels of alternative centerlines on the visual resource.

(8) Locations of all known nests of raptorial birds within one-half mile of alternative centerlines.

(Annotation: Consult MDFWP for data and supplement with field investigations.)

(9) The results of an on-the-ground survey of cultural resources along the preferred and alternative centerline, based on the importance of the sites and the degree of potential adverse impact that is expected to occur and based on the data and analysis conducted by the applicant pursuant to ARM 36.7.2544(12) and (13). The mapping requirements regarding cultural resource sites may be altered by conditions specified in the certificate. The survey results shall be submitted on site survey forms that identify the adverse impacts.

(Annotation: Consult SHPO for assistance in conducting the survey and to obtain the survey forms.)

(10) The following information concerning noise, radio and television interference, and electrical effects:

(a) for transmission facilities of 230 kV or greater voltage, a description of present noise conditions at residences located within 1000 feet of each alternative centerline;

(b) for transmission facilities of 230 kV or greater voltage, an overlay showing the locations of railroad routes and telephone communication lines within one mile of each alternative centerline where the centerline would potentially parallel these facilities;

(c) a description of existing radio reception at individual houses located within 1000 feet of each alternative centerline.

(Annotation: See also the requirements of the Federal Communications Commission, Federal Code of Regulations, Title 47, Part 15, Section 15.25, "Operation Requirements: Incidental Radiation Device.")

(11) The certificate holder shall submit a summary of the major adverse impacts of the preferred centerline and any alternatives or portions of alternative centerlines, a discussion of proposed mitigation to reduce the adverse impacts, and an explanation of the reasons the preferred centerline was selected.

(History: Sec. 75-20-105, MCA; IMP, 75-20-301, and 75-20-302, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.4004 PIPELINES, CENTERLINE EVALUATION IN AN APPROVED ROUTE, INFORMATION REQUIREMENTS The certificate holder shall prepare and submit the following information for its preferred centerline and any alternative centerlines that may be identified by the certificate holder or the department. The certificate holder may cross-reference any information required

by ARM 36.7.2535, ARM 36.7.2544, and ARM 36.7.2545 that was supplied in the application and that meets any of the following requirements.

(1) The information required by ARM 36.7.4003(1)(i) and (iii), (2)-(9) and (11); and

(2) An overlay to the base map required by (1) of any sensitive areas or areas of concern listed in ARM 36.7.2535 that are located within the approved route.

(History: Sec. 75-20-105, MCA; IMP, 75-20-301, and 75-20-302, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.4005 LINEAR ASSOCIATED FACILITIES, CENTERLINE EVALUATION IN AN APPROVED CORRIDOR, INFORMATION REQUIREMENTS The information requirements for the centerline evaluation of a linear associated facility in an approved corridor shall be specified in the certificate for a facility as defined by 75-20-104(10)(a), MCA.

(Annotation: Information requirements will be based on appropriate baseline requirements listed in ARM 36.7.2544 or 36.7.2545 and ARM 36.7.4004 or 36.7.4005.)

(History: Sec. 75-20-105, MCA; IMP, 75-20-301, and 75-20-302, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.4006 FINAL CENTERLINE APPROVAL Although the board may deny the applicant's preferred centerline and any individual alternative centerline it considered, the board shall issue an order approving a final centerline within the approved route. The approved centerline shall be included in the certificate.

(1) At the time the board approves the final centerline, a final set of environmental specifications, including site-specific measures, shall be identified and included in the certificate.

(2) At the time the board approves the final centerline, the board may specify in the certificate that construction and reclamation bonds must be posted by the certificate holder in a manner that will permit the board to access the bonds for purposes of ensuring that the conditions of the certificate are met.

(Annotation: The construction bond may be held until all new permanent access roads have been physically closed and all temporary access roads have been obliterated and reclaimed as required by the certificate. The construction bond may also be used as necessary to correct any damage occurring during construction that the certificate holder fails to rectify. The reclamation bond may be held in order to ensure that restoration and revegetation of the right-of-way is accomplished in a satisfactory manner as required by the certificate.)

(3) The precise location of the final centerline, preliminary locations for all access roads, and, for electric transmission lines, preliminary locations for the structures, shall be shown on plan-profile drawings or delineated by lines approximately one millimeter wide and by symbols, respectively, on USGS topographic maps at a scale of 1:24,000 and described according to range, township and quarter-section numbers.

(History: Sec. 75-20-105, MCA; IMP, 75-20-301, and 75-20-302, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Sub-Chapters 41, 42, 43, 44, 45, 46, 47, 48 and 49 Reserved

Sub-Chapter 50
Amendments to Certificates

Rule Number	Title	Page
36.7.5001	Notification of Proposed Change or Addition to a Facility or Associated Facility for Which a Certificate has been Granted.	166
36.7.5002	Contents of Notice to Amend A Certificate. .	166
36.7.5003	Certificate Amendment Pursuant to Change in Department of Health or Board of Health Permit.	166
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36.7.5001 NOTIFICATION OF PROPOSED CHANGE OR ADDITION TO A FACILITY OR ASSOCIATED FACILITY FOR WHICH A CERTIFICATE HAS BEEN GRANTED If a certificate holder desires to change or add to a facility or associated facility for which a certificate has been granted, the certificate holder shall file a notice for a certificate amendment with the department and department of health by certified mail or personal delivery. Changes or additions subject to these requirements include the following:

(1) Any change in location or design or any addition to a facility or an associated facility that could reasonably be expected to result in a material increase in any environmental impact;

(2) Any change in location or design or any addition to a facility or an associated facility that could reasonably be expected to result in impacts to new geographic areas or human, animal or plant populations that were not evaluated prior to the issuance of the certificate;

(3) Any change in or addition to a facility or an associated facility affecting compliance with a condition of the certificate; and

(4) Any change in or addition to a facility or associated facility that would materially change the basis of any finding required by ARM 36.7.3502 - ARM 36.7.3508.

(History: Sec. 75-20-105, MCA; IMP, 75-20-219, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.5002 CONTENTS OF NOTICE TO AMEND A CERTIFICATE The certificate holder shall provide drawings, analyses, maps, and other information at a level of detail equivalent to that required in an application to describe any proposed change to a facility in a notice for amendment to a certificate. Material pertaining to a proposed amendment to a certificate that was previously submitted in an application or during the board's hearing on the facility may be referenced.

(History: Sec. 75-20-105, MCA; IMP, 75-20-219, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.5003 CERTIFICATE AMENDMENT PURSUANT TO CHANGE IN DEPARTMENT OF HEALTH OR BOARD OF HEALTH PERMIT An amendment affecting, amending, altering or modifying a decision, opinion, order, certification or permit issued by the department of health or board of health under the applicable statutes administered by those agencies in accordance with 75-20-219(5), MCA, shall be adopted by the board and incorporated as a certificate amendment, as follows:

(1) Within 10 days of the issuance of an amendment by the department of health or board of health, the certificate holder shall serve the board with a certified copy of the amendment;

(2) The board shall issue a notice of proposed action to modify the certificate to fully and completely incorporate the amendment authorized by the department of health or board of health;

(3) Upon the timely filing of a request for hearing, the board shall hold a show-cause hearing why the proposed action should not be taken. A request for hearing may be made by any person affected by the proposed action;

(4) A person requesting a show-cause hearing shall file with the board all testimony, evidence and exhibits in writing that it intends to present at the hearing within 15 days after filing a request for hearing. Failure to comply with this rule shall be deemed a waiver of a person's request for hearing and of rights to participate in the hearing, if any;

(5) If no show-cause hearing is requested or required, the board shall take the proposed action as set forth in the notice pursuant to (2);

(6) A show-cause hearing, if any, shall be limited to issues over which the board has jurisdiction.

(History: Sec. 75-20-105, MCA; IMP, 75-20-219, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.5004 DECISIONS ON CERTIFICATE AMENDMENTS (1) In order for the board to determine that an amendment to a certificate should be granted or modified, the board must find and determine that the amendment will not materially alter the findings required by ARM 36.7.3502 - ARM 36.7.3508 that were the basis for granting the certificate.

(2) In making the findings required by (1), the board shall limit itself to consideration of the effects that the proposed change or addition to the facility contained in the notice for the certificate amendment may produce.

(History: Sec. 75-20-105, MCA; IMP, 75-20-219, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Sub-Chapters 51, 52, 53 and 54 Reserved

Sub-Chapter 55
Facility Monitoring

Rule Number	Title	Page
36.7.5501	Monitoring Required by Certificate	169
36.7.5502	Electric Transmission Lines, Monitoring Requirements	169

36.7.5501 MONITORING REQUIRED BY CERTIFICATE (1) As required by 75-20-303(3)(a)(v), MCA, the certificate shall include a plan for monitoring environmental effects of the facility and associated facilities. The plan shall specify the types of monitoring data and activities required, and the terms and schedules of monitoring data collection, and assign responsibilities for data collection, inspection, reporting, or other activities required to effectively monitor the facility and associated facilities.

(2) The certificate holder shall reimburse the department for all costs incurred relative to the monitoring plan approved by the board in accordance with 75-20-402, MCA.

(3) All activities of the certificate holder or the certificate holder's representative during preconstruction, construction, reclamation, operation, maintenance and decommissioning of the facility shall be conducted in accordance with the environmental specifications and conditions to the certificate approved by the board.

(History: Sec. 75-20-105, MCA; IMP, 75-20-301, 75-20-303, and 75-20-402, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

36.7.5502 ELECTRIC TRANSMISSION LINES, MONITORING REQUIREMENTS (1) Within 15 days of the board's approval of a centerline, the department shall designate an environmental inspector to monitor compliance with the environmental specifications and any other conditions contained in the certificate. The environmental inspector shall be the certificate holder's liaison with the department on all subsequent activities related to the facility.

(2) Within 15 days of the board's approval of a centerline, the certificate holder shall designate a chief field representative to be the department's liaison with the certificate holder on all subsequent activities related to the facility.

(3) The certificate holder shall submit to the department a notice of intent to begin construction and shall make a reasonable effort to notify or otherwise inform landowners whose property would be crossed by the facility and/or associated access roads at least 15 days prior to the commencement of construction activities on the facility.

(4) The certificate holder shall submit the following information to the department at least 15 days prior to the commencement of construction of any segment of the project. Any information previously submitted in an application or during the centerline evaluation of the facility may be referenced.

(a) On orthophoto mosaics or plan and profile maps, or on available USGS 7.5 minute topographic maps, at a scale of 1:24,000, the location of the following:

(i) the centerline;

(ii) all construction and maintenance access roads;

(iii) structures;

(iv) clearing backlines, staging sites, and pulling sites, if known;

(v) borrow pits;
(vi) campsites; and
(vii) storage or other buildings.
(b) a list of contractors, an estimate of the number of workers, and a description of the types of heavy equipment that will be employed, and a proposed schedule of construction activities for each segment of line.
(5) The certificate holder shall promptly notify the department of any changes or updates in the schedule after the initial schedule is submitted.
(6) If a construction bond is required by the certificate, the certificate holder shall submit to the department proof that the construction bond has been obtained prior to the commencement of construction. Pursuant to the certificate, this bond may be held until construction is complete and the board has determined that all environmental specifications have been followed, that cleanup is complete, that damage has been repaired, and that recontouring, site restoration, and revegetation are progressing satisfactorily.
(a) In the event the department finds that the certificate holder is not correcting damage created during construction in a satisfactory manner, the department may file a forfeiture of bond report with the board.
(b) The board shall subsequently determine the amount and disposition of all or a portion of the bond to correct any damage that has not been corrected by the certificate holder.
(7) For electric transmission lines greater than 230 kV, the certificate holder shall hold a preconstruction conference at least 15 days prior to commencement of construction activities to brief the following persons regarding the content of the environmental specifications required by the certificate, to identify any specific geographical areas of concern where special construction precautions may be required, and to explain the role of the environmental inspector:
(a) the certificate holder's field representative;
(b) all contractors involved in the facility;
(c) the contractors' environmental inspectors, if any;
(d) representatives of affected local, state, and federal agencies; and
(e) the environmental inspector.
(8) The certificate holder shall submit a written notice to the department describing the date and nature of proposed construction activities in any problem area specified at the preconstruction conference at least 5 days prior to beginning the activity.
(9) If a construction and reclamation bond is required by the certificate pursuant to ARM 36.7.4006(2), at the time the construction bond is released by the board, the certificate holder shall submit proof that the reclamation bond has been obtained. Pursuant to the certificate, portions of this bond or bonds may be held for one year and five years, respectively, or until the board determines that revegetation and road closures adequately meet the requirements specified in the certificate and in (10) below.

(a) in the event the department finds that revegetation has not attained the growth required after one year or five years specified in (10) below, the department may find the certificate holder in substantive noncompliance with the terms of the reclamation bond and may file a forfeiture of bond report with the board.

(b) the board may subsequently determine the amount and disposition of all or a portion of the bond or bonds to achieve satisfactory reclamation and revegetation.

(10) The following standards for reclamation shall be used to determine reclamation bond release or to determine that expenditure of the reclamation bond is necessary to meet the requirements of the certificate, unless otherwise determined by the board:

(a) in rangeland, coverage of desirable perennial plant species excluding, specifically, species recognized as noxious weeds, shall be 30 percent or more of that on adjacent rangeland of similar slope and topography the year following revegetation, and 90 percent or more of the coverage of adjacent rangeland of similar slope and topography within five years following revegetation;

(b) in forested land, revegetated land exclusive of the right-of-way or permanent roads, shall be planted with trees by the end of five years so that the approximate stand density of the adjacent forest will be attained at maturity;

(c) on private lands the certificate holder may contract with the landowner for revegetation or reclamation which would release the certificate holder from the reclamation bond performance on the property upon showing the board that the property owner wants different reclamation standards from those specified in (a) and (b) applied on his property and that not reclaiming to the standards specified in (a) and (b) would not have adverse impacts on the public and other landowners; and

(d) on public lands the certificate holder may contract with the affected land management agency for revegetation or reclamation which would release the certificate holder upon showing the board that the land management agency wants different reclamation standards from those specified in (a) and (b) applied on its lands and that not reclaiming to the standards specified in (a) and (b) would not have adverse impacts on the public and other landowners.

(11) At the direction of the board, the department may formulate and carry out a plan to ensure that the standards in (10)(a), (b), (c), and (d) are accomplished.

(12) In the event that the department finds the contractor responsible for construction of the facility to be in violation of the construction and mitigation standards or any of the conditions of the certificate, and finds that the certificate holder cannot or will not take appropriate action to correct the problem, the department shall immediately file an incident report with the certificate holder and the board, as follows:

(a) the incident report shall describe the nature, location, date, and extent of the violation and the sections of the construction and mitigation standards or conditions to the certificate that have been violated, and recommend corrective actions.

(b) upon receipt of an incident report, the certificate holder shall immediately correct the violation or immediately file with the department a statement explaining why the violation may not be corrected.

(c) immediately upon correction of any violation described in an incident report, the department shall file a compliance report with the certificate holder and the board stating that the problem has been satisfactorily resolved.

(d) failure by the certificate holder to comply with the directives of an incident report shall result in appropriate enforcement action taken in accordance with 75-20-408, MCA.

(History: Sec. 75-20-105, MCA; IMP, 75-20-301, 75-20-303, and 75-20-402, MCA; NEW, 1984 MAR p. 1844, Eff. 12/28/84.)

Sub-Chapter 9

Transmission Line Exemption

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36.7.901 GENERAL PROVISIONS (1) Definitions. In these rules:

(a) An "upgrade" means an existing transmission line of a voltage and length covered by the act which is being converted to a line of higher operating voltage, or being converted from single circuit to double circuit, using the same centerline.

(b) A "relocation" means an existing transmission line of a voltage and length covered by the act which is being moved to a new location outside the existing right-of-way.

(c) A "reconstruction" means a transmission line of a voltage and length covered by the act which is being rebuilt in the same right-of-way, including reconductoring, replacement of poles or towers, crossarms, or insulating hardware. It does not include activities that are part of normal and customary maintenance which do not require a certificate pursuant to 75-20-104(7)(d), MCA, or to reconstructions necessitated by storm damage or other causes for which a waiver is obtained pursuant to 75-20-304(2), MCA.

(d) A "game range" means land owned, leased, or otherwise controlled by the Montana department of fish, wildlife, and parks or the U.S. fish and wildlife service and managed as wildlife habitat. It includes all designated game management areas.

(e) A "wildlife refuge" means land owned, leased, or otherwise controlled by the U.S. fish and wildlife service as part of the national wildlife refuge system.

(f) A "critical habitat for rare, threatened, or endangered species" means areas designated by the U.S. fish and wildlife service pursuant to the endangered species act of 1973.

(g) A "big game security area" means an area of land more than 0.5 miles from an existing road or right-of-way which is recognized by the Montana department of fish, wildlife and parks or other land management agency as providing essential escape cover or other secure habitat for big game species.

(h) A "viewshed" means the portion of the surrounding landscape that is seen from a designated observation point. The "foreground" of a viewshed means the detailed landscape found from the observation point to 1/4-1/2 mile away. The "middleground" of a viewshed means the area located from 1/4-1/2 to 3-5 miles from the observer.

(i) "Historical and archaeological properties" means any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history, archaeology, or culture.

(2) The department recommends that persons intending to construct exempt facilities consult with the department regarding the information required for the notice of intent to construct an exempt facility 36.7.905. Data to meet the information requirements and criteria of 36.7.902 (5) and (6), III (4) and (5) are available from state and federal agencies. Officials to contact include the director of the Montana department of fish, wildlife and parks, the forest supervisor of the applicable U.S. forest, the district manager of the

applicable U.S. bureau of land management district, the regional manager of the U.S. fish and wildlife service, the state conservationist and district conservationists of the U.S. soil conservation service. The written request for information from these agencies should include a map at a scale of at least 1:125,000 showing the location of the existing facility, access roads, and proposed relocation, if any. Department staff can assist persons seeking exemptions to locate the data required by these rules.

(History: Sec. 75-20-202, MCA; IMP, Sec. 75-20-202, MCA; NEW, 1983 MAR p. 1085, Eff. 8/12/83.)

36.7.902 ELIGIBLE EXEMPTIONS FOR UPGRADES The upgrade of an electric transmission facility is exempt from provisions of the act if all the following conditions are met:

(1) the upgrade falls into one of the following categories:

(a) 69 kV or less upgraded to no more than 115 kV,

(b) 100 kV or 115 kV upgraded to no more than 161 kV,

(c) 161 kV upgraded to no more than 230 kV, or

(d) 230 kV single circuit upgraded to 230 kV double circuit;

(2) the upgraded length of line in Montana is 30 miles or less;

(3) the facility will be rebuilt in the same right-of-way using existing access roads; or if additional right-of-way or new access roads are required, the person submits a notorized statement from at least 80 percent of the affected landowners stating that the landowner has granted an easement or that the landowner has been contacted by the person, is willing to work with the person to identify an acceptable location on his/her property for additional right-of-way or access road easement, and would be willing to grant additional right-of-way or access road easements along such route and in accordance with mitigation and construction standards as established by the department and approved by the board. This statement in no way binds the landowner with respect to the compensation for such right-of-way or easements, and the landowner has the right to negotiate a fair and reasonable price for the right-of-way or easements. Likewise, this statement does not preclude the exercise of the power of eminent domain held by the person in the event that a fair and reasonable price cannot be negotiated;

(4) the upgrade meets the following requirements for changes in structure height and type:

(a) for existing facilities with a mean structure height less than 75 feet, the mean structure height of new structures will not be greater than 1.75 times the mean height of existing structures;

(b) for existing facilities which have a mean structure height of 75 feet or more, the mean structure height of new structures will not be greater than 130 feet; and

(c) the upgrade will use one of the following:

(i) no change in poles, single or double circuit;

(ii) single pole changed to taller single pole or to h-frame structures, single or double circuit;

(iii) multiple pole h-frame structures changed to taller multiple pole h-frame structures, single or double circuit; or

(iv) in the case of 230 kV single circuit changed to 230 kV double circuit, structures may be changed to steel lattice towers only in those locations where the line does not cross cultivated agricultural land (unless the landowner specifies in the statement required by 36.7.902 (3) willingness to accept compensation for the inconvenience), is not in the viewshed of any home, federal or state highway, designated recreation area, or historic site which is eligible for the national register of historic places because of its setting;

(5) the upgraded line and new access roads do not:

(a) cross or pass within one-half mile for an upgrade up to 161 kV, or within one mile for 230 kV, of the following:

(i) an area designated by the federal government as part of the national wilderness preservation system, or an area currently being studied for possible inclusion in the system;

(ii) primitive areas and lands managed specifically for their roadless and primitive recreation values by the U.S. forest service, bureau of land management, or other federal or state agency; and

(iii) national or state parks, national natural landmarks, national or state monuments, and other lands managed by federal or state agencies specifically to preserve their natural aesthetic qualities;

(b) cross a game range or wildlife refuge, or cross critical habitat for rare, threatened, or endangered species;

(c) cross irrigated cropland if the upgrade would result in reduced land productivity or interference with mechanical irrigation equipment, unless the landowner specifies in the statement required at 36.7.902 (3) willingness to accept compensation for these inconveniences;

(d) cross a platted subdivision or a residential area with more than four homes within one-quarter mile of the line in any mile of the line, in those cases where an upgrade involves an increase in height or change in type of structure;

(e) pass through the middle ground or foreground of the viewshed from a state or federal highway for more than 10 miles; or

(f) cross a stream classified by the Montana department of fish, wildlife, and parks as a class one stream. This subsection applies only to new access roads;

(6) if the upgraded line or new access roads cross or pass within the specified distance of the following areas (a) through (f), all such instances must be listed in the information supplied to the department under 36.7.905 and include proposed mitigation measures. The department will consider the impacts and mitigation measures in preparing its construction and mitigation standards if the line:

(a) crosses or passes within one-half mile of a designated campground, interpretive site, rest area, picnic or day use recreational area, fishing access site, class one or two fishery or other designated outdoor recreation site listed in

the Montana statewide comprehensive outdoor recreation plan published by the Montana department of fish, wildlife and parks;

(b) crosses or passes within one-half mile of nesting sites of bald eagles, golden eagles, peregrine falcons, prairie falcons, merlins, ferruginous hawks, great blue herons, double-crested cormorants, or other colonial water birds;

(c) crosses areas designated by the U.S. forest service or bureau of land management as Research Natural Areas, Areas of Critical Environmental Concern, Special Interest Areas, Research Botanical Areas, or other areas which include old-growth forests greater than 5 acres which have not been burned or logged for at least 100 years, and mature cottonwood forests where average canopy height is 50 feet or more;

(d) crosses wetlands, waterfowl concentrations or feeding flight paths identified by the Montana department of fish, wildlife, and parks or the U.S. fish and wildlife service;

(e) crosses areas having highly erosive or unstable soils as indicated by soil conservation service data; or

(f) crosses historic or archaeological sites listed on the national register of historic places, or which have been determined eligible for listing on the national register, or passes within the foreground or middle ground viewshed of an historic site for which the undisturbed natural setting of the site is one of the criteria that contributes to its eligibility for listing on the national register;

(7) the person demonstrates that historic and archaeological properties that would be affected by the proposed undertaking have been properly identified and evaluated in a report that documents that the following procedures have been carried out:

(a) the person identifies what resources are located in the project area by:

(i) consulting with the state historic preservation officer (shpo) to determine what surveys have been done and what properties have been identified previously;

(ii) obtaining recommendations as to what survey methods should be employed to locate any additional properties that may not yet have been identified and/or;

(iii) demonstrating that previous ground disturbance would eliminate the need for a cultural resource survey;

(b) the person demonstrates assessment of impacts and plans to mitigate or avoid cultural resources by:

(i) submitting to the shpo a report that includes a listing of the sites in the project area, an assessment of their significance, an assessment of project-related impacts upon each, and recommendations on measures to avoid or minimize impacts;

(ii) the person requests shpo comments and provides additional information as needed; and

(iii) the person submits their report and shpo's comments to the department so the department can consider the impacts and mitigation measures in preparing its construction and mitigation standards; and

(8) the person agrees that the upgrade and new access roads will be built in accordance with construction and mitigation standards established by the department for the facility. The department will consult with the person prior to submitting proposed standards to the board for adoption or modification.

(History: Sec. 75-20-202, MCA; IMP, Sec. 75-20-202, MCA; NEW, 1983 MAR p. 1085, Eff. 8/12/83.)

36.7.903 ELIGIBLE EXEMPTIONS FOR RELOCATIONS Relocation of an electric transmission facility is exempt from provisions of the act if all the following conditions are met:

(1) the facility or portion of the facility being relocated in Montana is 30 miles or less in length and 230 kV or less, the relocation is not part of a longer relocation project that would otherwise be covered under the act, and the new location is unlikely to have significant environmental impact;

(2) a person desiring to construct an exempt upgrade 36.7.902 or reconstruction 36.7.904 may relocate a portion of the facility if the relocated portion will reduce environmental impacts over current conditions;

(a) a combined upgrade-relocation in Montana may not exceed 30 miles in length if it is to qualify for exemption;

(b) the relocated portion of a reconstruction in Montana may not exceed 30 miles in length if it is to qualify for exemption;

(3) the person submits as evidence of landowners' consent to give easements for access roads and right-of-way a notarized statement from at least 80 percent of the affected landowners containing the information specified in 36.7.902 (3);

(4) the relocated line and access roads do not:

(a) cross or pass within one mile of the areas specified in 36.7.902 (5) (a); an exception to the one-mile zone is made if the current line crosses one of these specified areas and the relocation would remove the current line from the area;

(b) cross the areas specified in 36.7.902 (5) (b);

(c) cross platted subdivisions, irrigated croplands where the relocation would result in reduced land productivity or interference with mechanical irrigation equipment (unless the landowner specifies in the statement required by 36.7.902 (3) willingness to accept compensation for these inconveniences), or a residential area with more than four homes within one-quarter mile of the line in any mile of the line;

(d) pass through the middle ground or foreground of the viewshed from a state or federal highway for more than 10 miles; or

(e) cross a big game security area, or a stream classified by the Montana department of fish, wildlife and parks as a class one stream;

(5) if the relocated line or new access roads cross or pass within the specified distances of the areas listed in 36.7.902 (6), all such instances must be listed in the information supplied to the department under 36.7.905 including

proposed mitigation measures. The department will consider the impacts and mitigation measures in preparing its construction and mitigation standards;

(6) the person demonstrates that any historic and archaeological properties that would be affected have been identified and evaluated pursuant to the procedures outlined in 36.7.902(7); and

(7) the person agrees that the relocation and access roads will be built in accordance with construction and mitigation standards established by the department for the facility. The department will consult with the person prior to submitting proposed standards to the board for adoption or modification.

(History: Sec. 75-20-202, MCA; IMP, Sec. 75-20-202, MCA; NEW, 1983 MAR p. 1085, Eff. 8/12/83.)

36.7.904 ELIGIBLE EXEMPTIONS FOR RECONSTRUCTION A person reconstructing an electric transmission facility is exempt from provisions of the act if all the following conditions are met:

(1) the facility being reconstructed is 230 kV or less;

(2) the reconstruction will be in the same right-of-way as the existing facility and will use existing access roads. If additional right-of-way or easements for new access roads are required, the person shall submit evidence of landowner consent as specified in 36.7.902(3);

(3) the construction will be of the same type and configuration, and the mean height will not be greater than 1.25 times the mean height of existing structures;

(4) the person demonstrates that if any new access roads or right-of-way affect historic and archaeological properties, these properties have been identified and evaluated pursuant to the procedures outlined in 36.7.902(7); and

(5) the person agrees that the reconstruction will be built in accordance with construction and mitigation standards established by the department for the facility. The department will consult with the person prior to submitting proposed standards to the board for adoption or modification.

(History: Sec. 75-20-202, MCA; IMP, Sec. 75-20-202, MCA; NEW, 1983 MAR p. 1085, Eff. 8/12/83.)

36.7.905 NOTICE OF INTENT TO CONSTRUCT AN EXEMPT FACILITY Prior to initiation of construction, a person desiring to construct an exempt facility shall give public notice briefly describing the proposed facility, its location, and the intent to construct an exempt facility to persons residing in the area in which any portion of the proposed facility may be located. Notice shall be given by publication of this information once in each of three consecutive weeks in newspapers of general circulation in the areas to be affected by the proposal. The person desiring to construct an exempt facility shall also publish a display ad in those newspapers, describing the proposal, to further inform those persons who might be affected. The person desiring to construct an exempt facility shall also inform the department, board, department of health,

board of health, and those agencies listed in 75-20-211(3), MCA, by certified mail or personal service, providing a copy of the public notice, and in addition shall provide the following information:

(1) a description of the existing facility that is to be modified, in a level of detail sufficient to enable the department and the board to determine its location and its structural and operation characteristics; the description must include U.S.g.s. 7.5' or 15' quadrangle maps with the existing line plotted on them or if these are unavailable the line must be demarcated on maps with a scale of 1:125,000 or larger;

(2) a description of the facility as it will be relocated, reconstructed, or upgraded, in sufficient detail for the department to develop specific construction and mitigation standards for the facility. U.S.g.s. 7.5' or 15' quadrangle maps showing the proposed line location must be supplied, or if these are unavailable, the line must be demarcated on maps with a scale of 1:125,000 or larger;

(3) an explanation of the reason for the reconstruction, relocation, and/or upgrade;

(4) an explanation that demonstrates how each of the conditions listed in 36.7.902, 36.7.903, and/or 36.7.904 are or will be met; and

(5) a list of the landowners (names, addresses, phone numbers) that would be crossed by the facility or access roads.

(History: Sec. 75-20-202, MCA; IMP, Sec. 75-20-202, MCA; NEW, 1983 MAR p. 1085, Eff. 8/12/83.)

36.7.906 BOARD ACTION Within six months after receiving the notice and information provided in ARM 36.7.905, the board at an open meeting shall approve the construction and mitigation standards as developed by the department or as modified as the board deems necessary and appropriate. The board shall notify the person proposing to construct an exempt facility that the facility is exempt if constructed in compliance with the construction and mitigation standards and the notice and information required in ARM 36.7.905.

(History: Sec. 75-20-202, MCA; IMP, 75-20-202, MCA; NEW, 1983 MAR p. 1085, Eff. 8/12/83.)

36.7.907 CONSTRUCTION MONITORING BY DEPARTMENT The department shall monitor construction to ensure compliance with the construction standards.

(History: Sec. 75-20-202, MCA; IMP, 75-20-202, MCA; NEW, 1983 MAR p. 1085, Eff. 8/12/83.)

36.7.908 LOCAL, STATE, AND FEDERAL PERMITS A person relocating, reconstructing, and/or upgrading an exempt facility under these rules is responsible for compliance with all applicable local, state, and federal approvals, consents, permits, certificates, or other conditions for the construction, operation or maintenance of the exempt facility.

(History: Sec. 75-20-202, MCA; IMP, Sec. 75-20-202, MCA; NEW, 1983 MAR p. 1085, Eff. 8/12/83.)

Sub-Chapter 12

Geothermal Investigation Reports

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36.7.1201 DEFINITIONS Unless the context requires otherwise, in this sub-chapter:

(1) "Act" means the Montana Major Facility Siting Act, Title 75, Chapter 20, MCA, as amended.

(2) "Department" means the Department of Natural Resources and Conservation.

(3) "Environmental impact" means a change, adverse or beneficial, in the natural, cultural, or social setting created by some specific action.

(4) "Long-range plan" means the plan, actual or tentative, which a person has for the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation related to possible future development of a utility facility employing geothermal resources for the ensuing 10 years after submission to the department under this sub-chapter.

(5) "Person" means any individual, association, partnership, corporation, governmental agency, political subdivision, or any other entity or organization engaged in or proposing to engage in the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation, related to the possible future development of a utility facility employing geothermal resources.

(6) "Undergound exploration, investigation, or experimentation" means any physical activity conducted on or below the surface of the earth resulting in disturbance of the earth including, but not limited to, the boring of test holes, the construction of roads, and the gathering of well log information.

(7) "Utility facility" as defined by subsection 75-20-104 (10)(d), MCA, means any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy.

(8) "Well log" means an electrical, radiation, sonic, thermal, or other routine log run by mechanical means in a well or bore hole or any other log, survey, analysis, or report run or made.

(History: Sec. 75-20-1001, MCA; IMP, Sec. 75-20-1001, MCA; NEW, Eff. 10/5/74.)

36.7.1202 LONG-RANGE PLANS (1) On November 1, 1974, every person shall submit a long-range plan. In addition, every person shall submit a long-range plan on April 1, 1975, and each year thereafter.

(2) 20 copies of the long-range plan shall be submitted to the department, 32 South Ewing, Helena, Montana 59601. Less than 20 copies may be submitted upon prior approval of the department.

(3) The long-range plan shall be typed, printed, or otherwise legibly reproduced on 8 1/2" x 11" paper. Maps, drawings, charts, or other documents bound in a long-range plan shall be cut or folded to 8 1/2" x 11" size. Maps, drawings, or charts may accompany a long-range plan as separate exhibits.

(4) Typed or offset material shall have a 1 1/2" margin on the binding side and a 1" margin on all other sides.

(5) All pages in a long-range plan shall be consecutively numbered. Maps, drawings, or charts accompanying the long-range plan as exhibits shall be identified as "Exhibit " and, if comprising more than one sheet, shall be numbered "sheet_____ of_____."

(6) Within each long-range plan shall be included:

(a) any plans to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation, related to possible future development of geothermal resources;

(b) the approximate dates for gathering geological data by boring of test holes or other underground exploration, investigation, or experimentation, related to possible future development of geothermal resources shall be listed;

(c) a statement of the proposed activities to be conducted and the methods utilized;

(d) the general location, a description of the area involved, and the size and type of all drill wells, instruments, and all other equipment used.

(7) Any change in plans which would result in some action prior to the filing of the next long-range plan shall be reported to the department within 60 days.

(History: Sec. 75-20-1001, MCA; IMP, Sec. 75-20-1001, MCA; NEW, Eff. 10/5/74.)

36.7.1203 INITIAL FIELD REPORTS (1) 60 days before the boring of test holes or the initiation of other underground exploration, investigation, or experimentation, related to the possible future development of geothermal resources, every person shall submit an initial field report to the department.

(2) Within each initial field report shall be included:

(a) a description of the area involved in the investigation shown on a suitable map, and the probable location of test holes, sample sites, access roads, staging areas, areas where trees or soil are to be removed, and all other such activities. A suitable map would be one with a scale of 1:24,000, except in unusual cases or situations the department may recommend the scale;

(b) a summary of environmental impacts which would be created by the planned activities and a description of any plans to lessen, eliminate, or enhance such environmental impacts;

(c) a description of activities and methods which will be employed in the investigation.

(History: Sec. 75-20-1001, MCA; IMP, Sec. 75-20-1001, MCA; NEW, Eff. 10/5/74.)

36.7.1204 PERIODIC FIELD REPORTS (1) 60 days after the initiation of the boring of test holes or the initiation of other underground exploration, investigation, or experimentation, related to the possible future development of

geothermal resources, and at 60-day intervals for the duration of the investigation, every person shall submit a periodic field report to the department.

(2) Each periodic field report for its reporting period shall include:

(a) the location of holes drilled or underground experiments performed;

(b) the number, depth, and diameter of all hole(s) drilled;

(c) the kinds of well logs taken;

(d) the kinds of measurements taken (such as heat flow measurements);

(e) the casing installed, removed, or altered in any way;

(f) the methods of closing, plugging, or abandoning of any holes;

(g) the kinds of sampling, such as coring or cuttings taken;

(h) any other methods or activities which the department may require.

(History: Sec. 75-20-1001, MCA, IMP, Sec. 75-20-1001, MCA; NEW, Eff. 10/5/74.)

36.7.1205 FINAL FIELD REPORTS (1) Within 60 days after cessation of such investigation, every person shall submit a final field report to the department.

(2) The final field report shall be typed, printed, or otherwise legibly reproduced on 8 1/2" x 11" paper. Maps, drawings, charts, or other documents bound in a final field report shall be cut or folded to 8 1/2" x 11" size. Maps, drawings, or charts may accompany a final field report as separate exhibits.

(3) Typed or offset material shall have a 1 1/2" margin on the binding side and a 1" margin on all other sides.

(4) All pages in a final field report shall be consecutively numbered. Maps, drawings, or charts accompanying the final field report as exhibits shall be identified as "Exhibit_____" and, if comprising more than one sheet, shall be numbered "sheet _____ of _____."

(5) Within each final field report shall be included a summary of the previous periodic field reports for the entire investigation.

(6) If the investigation ceases 60 days after the initiation of the investigation the periodic field report and the final field report may be the same.

(History: Sec. 75-20-1001, MCA; IMP, Sec. 75-20-1001, MCA; NEW, Eff. 10/5/74.)

36.7.1206 GEOLOGICAL REPORTS (1) Within 9 months of the initiation of the investigation or 6 months of the completion of the investigation, whichever comes first, and at intervals of 6 months for the duration of the investigation, every person shall submit a geological report to the department.

(2) The geological report shall be typed, printed, or otherwise legibly reproduced on 8 1/2" x 11" paper. Maps, drawings, charts, or other documents bound in a geological report shall be cut or folded to 8 1/2" x 11" size. Maps, drawings, or charts may accompany geological reports as separate exhibits.

(3) Typed or offset material shall have a 1 1/2" margin on the binding side and a 1" margin on all other sides.

(4) All pages in a geological report shall be consecutively numbered. Maps, drawings, or charts accompanying the geological report as exhibits shall be identified as "Exhibit_____" and, if comprising more than one sheet, shall be numbered "sheet_____ of _____."

(5) Within each geological report shall be included:

(a) a summary of all well logs;

(b) results of all measurements of geologic properties;

(c) data relating to the geologic structure, temperature, and composition of rocks and fluids as determined by the investigation;

(d) any other geologic data generated by the investigation which may be requested by the department.

(History: Sec. 75-20-1001, MCA; IMP, Sec. 75-20-1001, MCA; NEW, Eff. 10/5/75.)

36.7.1207 CONFIDENTIALITY The pertinent technical data submitted pursuant to ARM 36.7.1204 through 36.7.1206 shall be for the exclusive use of the department and other state agencies involved in geothermal research or regulation, and shall remain confidential for a period of 2 years following commencement of operations for the drilling of an actual well for testing a potential geothermal resource or 6 months following completion of a well capable of producing a geothermal resource, unless approved in writing for release earlier by the person who submitted such data.

(History: Sec. 75-20-1001, MCA; IMP, Sec. 75-20-1001, MCA; NEW, Eff. 10/5/74.)

Sub-Chapters 13 and 14 Reserved

Appendix A

Montana Major Facility Siting Act (1983)

CHAPTER 20

MAJOR FACILITY SITING

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75-20-102. Policy and legislative findings.
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Part 2 — Certification Proceedings

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75-20-216 Study, evaluation, and report on proposed facility — assistance by other agencies
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75-20-221. Parties to certification proceeding — waiver — statement of intent to participate
75-20-222. Record of hearing — procedure — rules of evidence — burden of proof.

Part 3 — Decisions

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Part 10 — Geothermal Exploration

75-20-1001 Geothermal exploration — notification of department.

Part 11 — Energy Conversion Facility
(Repealed Sec. 28, Ch. 676, L. 1979)

Part 12 — Nuclear Energy Conversion

75-20-1201. Purpose — findings as to nuclear safety — reservation of nuclear facility approval powers to the people.

75-20-1202 Definitions
75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear facility
75-20-1204 Annual review of evacuation and emergency medical aid plans
75-20-1205. Emergency approval authority invalid for nuclear facilities

Part 1

Policy and General Provisions

75-20-101. Short title. This chapter shall be known and may be cited as the "Montana Major Facility Siting Act".

History: En. Sec. 1, Ch. 327, L. 1973; amd. Sec. 1, Ch. 494, L. 1975; R.C.M. 1947, 70-801.

75-20-102. Policy and legislative findings. (1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(2) The legislature finds that the construction of additional power or energy conversion facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of power and energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a power or energy conversion facility may not be constructed or operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this chapter.

History: En. Sec. 2, Ch. 327, L. 1973; amd. Sec. 2, Ch. 494, L. 1975; R.C.M. 1947, 70-802.

75-20-103. Chapter supersedes other laws or rules. This chapter supersedes other laws or regulations except as provided in 75-20-401. If any provision of this chapter is in conflict with any other law of this state or any rule promulgated thereunder, this chapter shall govern and control and the other law or rule shall be deemed superseded for the purpose of this chapter. Amendments to this chapter shall have the same effect.

History: En. Sec. 23, Ch. 327, L. 1973; amd. Sec. 23, Ch. 494, L. 1975; R.C.M. 1947, 70-823; amd. Sec. 1, Ch. 676, L. 1979.

75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (10), including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries, and facilities and associated facilities designed for or capable of producing, gathering, processing, transmitting, transporting, or distributing crude oil or natural gas, and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of $10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of $10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $10 million; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $10 million.

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(c) each pipeline and associated facilities designed for or capable of transporting gas (except for natural gas), water, or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection (10)(a) of this section;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $750,000;

(e) any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use.

History: En. Sec. 3, Ch. 327, L. 1973; amd. Sec. 1, Ch. 231, L. 1974; amd. Sec. 1, Ch. 268, L. 1974; amd. Sec. 3, Ch. 494, L. 1975; R.C.M. 1947, 70-803; amd. Sec. 1, Ch. 133, L. 1979; amd. Sec. 1, Ch. 527, L. 1979; amd. Sec. 2, Ch. 676, L. 1979; amd. Sec. 1, Ch. 539, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "would significantly change the conditions under which the facility is operated" for "would significantly change the conditions under which the certificate was issued" at the end of (1); added facilities subject to The Montana Strip and Underground Mine Reclamation Act within the exception to the definition of facility in (10)(a); increased $250,000 to $10 million throughout (10)(a); deleted "refining" after "utilizing" in (10)(a)(iv); and increased $250,000 to $750,000 at the end of (10)(d).

1981 Effective Date: Section 9, Ch. 539, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

1979 Effective Date: Section 2, Ch. 527, L. 1979, provided "This act is effective on passage and approval." Approved April 10, 1979.

75-20-105. Adoption of rules. The board may adopt rules implementing the provisions of this chapter, including but not limited to:

(1) rules governing the form and content of applications;

(2) rules further defining the terms used in this chapter;

(3) rules governing the form and content of long-range plans;

(4) any other rules the board considers necessary to accomplish the purposes and objectives of this chapter.

History: En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-820(1).

75-20-106. Contracts for information. (1) The department may contract with a potential applicant under this chapter in advance of the filing of a formal application for the development of information or provision of services required hereunder.

(2) Payments made to the department under such a contract shall be credited against the fee payable hereunder.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(2)(c).

75-20-107 through 75-20-110 reserved.

75-20-111. Grants, gifts, and funds. The department may receive grants, gifts, and other funds from any public or private source to assist in its activities under this chapter.

History: En. Sec. 22, Ch. 327, L. 1973; amd. Sec. 22, Ch. 494, L. 1975; R.C.M. 1947, 70-822.

75-20-112. Moneys to earmarked revenue fund. All fees, taxes, fines, and penalties collected under this chapter shall be deposited in the earmarked revenue fund for use by the department in carrying out its functions and responsibilities under this chapter.

History: En. 70-824 by Sec. 3, Ch. 270, L. 1975; R.C.M. 1947, 70-824.

Part 2

Certification Proceedings

75-20-201. Certificate required — operation in conformance — approval by popular vote of certificate for nuclear facility. (1) A person may not commence to construct a facility in the state without first applying for and obtaining a certificate of environmental compatibility and public need issued with respect to the facility by the board.

(2) A facility with respect to which a certificate is issued may not thereafter be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained therein.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the board decides to issue a certificate for a nuclear facility, it shall report such recommendation to the applicant and may not issue the certificate until such recommandation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(1); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978.

75-20-202. Exemptions. (1) This chapter does not apply to any aspect of a facility over which an agency of the federal government has exclusive jurisdiction, but applies to any unpreempted aspect of a facility over which an agency of the federal government has partial jurisdiction.

(2) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

(3) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that:

(a) would otherwise be covered by this chapter; and

(b) (i) is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods, or

(ii) utilizes coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility.

History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(3) thru (5); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978; amd. Sec. 2, Ch. 539, L. 1981.

Compiler's Comments

1981 Amendment Added subsection (3)(b)(ii).

Effective Date Section 9, Ch. 539, L. 1981, provided "This act is effective on passage and approval." Approved April 29, 1981.

75-20-203. Certificate transferable. A certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms, conditions, and modifications contained therein.

History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(2); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978; amd. Sec. 3, Ch. 676, L. 1979.

75-20-204 through 75-20-210 reserved.

75-20-211. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department and department of health a joint application for a certificate under this chapter and for the permits required under the laws administered by the department of health and the board of health in such form as the board requires under applicable rules, containing the following information:

(i) a description of the location and of the facility to be built thereon;

(ii) a summary of any studies which have been made of the environmental impact of the facility;

(iii) a statement explaining the need for the facility;

(iv) a description of reasonable alternate locations for the proposed facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility;

(v) baseline data for the primary and reasonable alternate locations;

(vi) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vii) such other information as the applicant considers relevant or as the board and board of health by order or rule or the department and department of health by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination which are physically and directly attached to each other and are operationally a single operating entity.

(3) An application shall be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility may be located,

both as primarily and as alternatively proposed and on the following state government agencies:

(a) environmental quality council;

(b) department of public service regulation;

(c) department of fish, wildlife, and parks;

(d) department of state lands;

(e) department of commerce;

(f) department of highways;

(g) department of revenue.

(4) The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application shall also be accompanied by proof that public notice thereof was given to persons residing in the area or alternative areas in which any portion of the proposed facility may be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-804(part); amd. Sec. 1, Ch. 553, L. 1979; amd. Sec. 4, Ch. 676, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 3, Ch. 539, L. 1981.

Compiler's Comments

1981 Amendments Chapter 274 substituted "department of commerce" for "department of community affairs" in (3)(e).

Chapter 539 substituted "for the permits required under the laws administered by the department of health and the board of health" for "for the permits required by state air and water quality laws" in (1)(a); and substituted "as the board and board of health by order or rule or the department and department of health by order or rule may require" for "as the board and board of health by rule or the department and department of health by order require" at the end of (1)(a)(vii).

Effective Date Section 9, Ch. 539, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

Transfer of Function Section 8, Ch. 274, L. 1981, provided in part: "(1) The department of community affairs is abolished.

(2) The following functions of the department of community affairs are transferred to the department of commerce: . . .

(e) relating to recommendations concerning major facility siting and contained in 75-20-211, 75-20-216, and 75-20-501; . . ."

Waiver of Baseline Data Requirement if Existing Contract Section 28, Ch. 676, L. 1979, provided: "The department may in its discretion waive the requirement that baseline data for the primary and reasonable alternate locations be submitted with an application under 75-20-211(1)(a)(v) in those cases in which the applicant has, prior to July 1, 1979, entered into a contract with the department to compile baseline information."

Composite Section This section was amended by Ch. 553 and Ch. 676, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Subsection (3) regarding persons and agencies to be served with a copy of an application was amended by both of the above chapters. Ch. 676 deleted "chief executive officer of each" but the Code Commissioner reinserted this phrase to incorporate the change by Ch. 553 from "municipality" to "unit of local government".

75-20-212. Cure for failure of service. Inadvertent failure of service on or notice to any of the municipalities, government agencies, or persons identified in 75-20-211(3) and (5) may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977, R.C.M. 1947, 70-804(part).

form and contain such information as the board by rule or the department by order prescribes. Notice of such an application shall be given as set forth in (3), (4), and (5) of 75-20-211.

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department, the department of health, or the agencies listed in 75-20-216(5) from carrying out their duties and responsibilities under this chapter, the department may require such additional filing fees as the department determines necessary, or the department may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required shall be conclusive.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(6); amd. Sec. 5, Ch. 676, L. 1979.

75-20-214. Notice of intent to file. A potential applicant for a certificate may file a notice of intent to file an application for a certificate for a facility defined in 75-20-104(10) at least 12 months prior to the actual filing of an application. The notice of intent shall specify the type and size of facility to be applied for, its preferred location, a description of reasonable alternative locations, and such information as the board by rule or department by order requires. An applicant complying with this section is entitled to a 5% reduction of the filing fee required under 75-20-215.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(7); amd. Sec. 6, Ch. 676, L. 1979.

75-20-215. Filing fee — accountability — refund — use. (1) (a) A filing fee shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter, but which shall not exceed the following scale based upon the estimated cost of the facility:

(i) 2% of any estimated cost up to $1 million; plus

(ii) 1% of any estimated cost over $1 million and up to $20 million; plus

(iii) 0.5% of any estimated cost over $20 million and up to $100 million; plus

(iv) 0.25% of any amount of estimated cost over $100 million and up to $300 million; plus

(v) .125% of any amount of estimated cost over $300 million.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required hereunder or required for preparation of an environmental impact statement under the Montana or national environmental policy acts. The applicant may submit the information to the department together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount which may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under such a contract shall be credited against the fee payable hereunder. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, the department of health, the board, the board of health, and the agencies listed in 75-20-216(5) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) above upon 30 days' notice to the applicant. The department and applicant may enter into a contract which exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that no one installment may exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of moneys expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund shall be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The revenues derived from filing fees shall be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(2)(a), (2)(b); amd. Sec. 7, Ch. 676, L. 1979.

75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies. (1) After receipt of an application, the department and department of health shall within 90 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and list the deficiencies therein; and upon correction of these deficiencies and resubmission by the applicant, the department and department of health shall within 30 days notify the

applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department and department of health shall use, to the extent they consider applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department of health shall within 1 year following the date of acceptance of an application and the board of health or department of health, if applicable, within an additional 6 months issue any decision, opinion, order, certification, or permit required under the laws administered by the department of health or the board of health and this chapter. The department of health and the board of health shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the primary and reasonable alternate locations in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department of health and board of health administer, and any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the determinations made under the laws administered by the department of health and the board of health. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). The decision, opinion, order, certification, or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be served upon the department and the board and shall be utilized as part of their final site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted by the board of health, the department of health shall provide an opportunity for public review and comment.

(4) Within 22 months following acceptance of an application for a facility as defined in (a) and (d) of 75-20-104(10) and for a facility as defined in (b) and (c) of 75-20-104(10) which is more than 30 miles in length and within 1 year for a facility as defined in (b) and (c) of 75-20-104(10) which is 30 miles or less in length, the department shall make a report to the board which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of highways, commerce; fish, wildlife, and parks, state lands; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1945, 70-807(1), (2); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 8, Ch. 676, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 4, Ch. 539, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of community affairs" in (5).

Chapter 539 inserted "or department of health" after "the board of health" in the middle of the first sentence of (3), substituted "permit required under the laws administered by the department of health or board of health and this chapter" for "permit required by state or federal air and water quality laws and this chapter" at the end of the first sentence of (3), substituted "the board of health shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction" for "the board of health shall determine compliance with air and water quality standards and implementation plans" in the second sentence of (3), deleted "of air and water quality impacts under the federal and state air and water quality statutes" after "The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters" in the third sentence of (3), substituted "specified in subsections (2) through (7) of 75-20-503" for "specified in 75-20-503(3) and (4)" in the third sentence of (3), substituted "the determinations made under the laws administered by the department of health and the board of health" for "the determinations made under federal and state air and water quality statutes" at the end of the third sentence of (3), and deleted "A decision by the department of health or board of health is subject to appellate review pursuant to the air and water quality statutes administered by the department of health and board of health" at the end of (3).

Transfer of Function: Section 6, Ch. 274, L. 1981, provided in part: "(1) The department of community affairs is abolished.

(2) The following functions of the department of community affairs are transferred to the department of commerce: . . .

(e) relating to recommendations concerning major facility siting and contained in 75-20-211, 75-20-216, and 75-20-501; . . ."

Effective Date: Section 9, Ch. 539, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

75-20-217. Voiding an application. An application may be voided by the department for:

(1) any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;

(2) failure to file an application in substantially the form and content required by this chapter and the rules adopted thereunder; or

(3) failure to deposit the filing fee as provided in 75-20-215.

History: En. Sec. 18, Ch. 327, L. 1973; amd. Sec. 18, Ch. 494, L. 1975; R.C.M. 1947, 70-818.2; amd. Sec. 9, Ch. 676, L. 1979.

75-20-218. Hearing date — location — department to act as staff — hearings to be held jointly. (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. Except for those hearings involving applications submitted for facilities as defined in (b) and (c) of 75-20-104(10), certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion thereof is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board may

request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the department of health and the board of health shall hold any required permit hearings required under laws administered by those agencies in conjunction with the board certification hearing. In such a conjunctive hearing the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the department of health and the board of health.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1947, 70-807(4); amd. Sec. 10, Ch. 676, L. 1979; amd. Sec. 5, Ch. 539, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of health and the board of health" for "duly authorized state air and water quality agencies" near the beginning and at the end of (3).

Effective Date: Section 9, Ch. 539, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

75-20-219. Amendments to a certificate. (1) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility other than as provided in the alternates set forth in the original application. If the department determines that the proposed change would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify the amendment with such conditions as it deems appropriate.

(2) In those cases where the department determines that the proposed change in the facility would not result in any material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall automatically grant the amendment either as applied for or upon such terms or conditions as the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If the department or the board under subsection (4) determines that a hearing is required because the proposed change would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If the department determines that the proposed change in the facility would not result in any material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, and a hearing is required because the department's determination is appealed to the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing evidence that the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility other than as provided in the alternates set forth in the original application.

(5) If an amendment is required to a certificate which would affect, amend, alter or modify a decision, opinion, order, certification, or permit issued by the department of health or board of health, such amendment must be processed under the applicable statutes administered by the department of health or board of health.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1947, 70-807(3); amd. Sec. 11, Ch. 676, L. 1979; amd. Sec. 1, Ch. 372, L. 1981.

Compiler's Comments

1981 Amendment: Substituted subsection (3) for "If a hearing is required, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted", and inserted subsection (4).

75-20-220. Hearing examiner — restrictions — duties. (1) If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board, an employee of the department, or a member or employee of the department of health or board of health. A hearing examiner, if any, shall be appointed by the board within 20 days after the department's report has been filed with the board. If a hearing is held before the board of health or the department of health, the board and the board of health or the department of health shall mutually agree on the appointment of a hearing examiner to preside at both hearings.

(2) A prehearing conference shall be held following notice within 60 days after the department's report has been filed with the board.

(3) The prehearing conference shall be organized and supervised by the hearing examiner.

(4) The prehearing conference shall be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties, all direct testimony which they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on shall be submitted and served in like manner, at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery which shall be completed before the commencement of the hearing, upon good cause shown and under such other conditions as the hearing examiner shall prescribe.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing shall proceed, setting forth those section 75-20-301 criteria as to which no issue of fact or law has been raised which are to be conclusively presumed and are not subject to further proof except for good cause shown, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board and in the case of a conjunctive hearing, within 90 days to the board and the board of health or department of health proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall insure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) of this section to expedite the hearing for a facility when the department has recommanded approval of a facility and no objections have been filed.

History: En. Sec. 9, Ch. 327, L. 1973; amd. Sec. 9, Ch. 494, L. 1975; R.C.M. 1947, 70-809(3); amd. Sec. 12, Ch. 676, L. 1979; amd. Sec. 6, Ch. 539, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or the department of health" after "board of health" throughout the last sentence of (1) and near the end of (9).

Effective Date: Section 9, Ch. 539, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

75-20-221. Parties to certification proceeding — waiver — statement of intent to participate. (1) The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion, order, certification, or permit by the board of health under this chapter may include as active parties:

(a) the applicant;

(b) each political entity, unit of local government, and government agency, including the department of health, entitled to receive service of a copy of the application under 75-20-211(3);

(c) any person entitled to receive service of a copy of the application under 75-20-211(5);

(d) any nonprofit organization formed in whole or in part to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent commercial and industrial groups; or to promote the orderly development of the areas in which the facility is to be located;

(e) any other interested person who establishes an interest in the proceeding.

(2) The department shall be an active party in any certification proceeding in which the department recommends denial of all or a portion of a facility.

(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in (b), (c), (d), or (e) of subsection (1).

(4) Any party waives the right to be a party if the party does not participate in the hearing before the board or the board of health.

(5) Each unit of local government entitled to receive service of a copy of the application under 75-20-211(3) shall file with the board a statement showing whether the unit of local government intends to participate in the certification proceeding. If the unit of local government does not intend to participate, it shall list in this statement its reasons for failing to do so. This statement of intent shall be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government.

History: En. Sec. 8, Ch. 327, L. 1973; amd. Sec. 8, Ch. 494, L. 1975; R.C.M. 1947, 70-808; amd. Sec. 2, Ch. 583, L. 1979; amd. Sec. 13, Ch. 676, L. 1979.

75-20-222. Record of hearing — procedure — rules of evidence — burden of proof. (1) Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon shall be made a part of the record.

(2) A record shall be made of the hearing and of all testimony taken.

(3) In a certification proceeding held under this chapter, the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of 75-20-301 are met.

(4) All proceedings under this chapter are governed by the procedures set forth in this chapter, the procedural rules adopted by the board, and the Montana Rules of Evidence unless one or more rules of evidence are waived by the hearing examiner upon a showing of good cause by one or more of the parties to the hearing. No other rules of procedure or evidence shall apply except that the contested case procedures of the Montana Administrative Procedure Act shall apply if not in conflict with the procedures set forth in this chapter or the procedural rules adopted by the board.

History: En. Sec. 9, Ch. 327, L. 1973; amd. Sec. 9, Ch. 494, L. 1975; R.C.M. 1947, 70-809(1), (2); amd. Sec. 14, Ch. 676, L. 1979.

Part 3

Decisions

75-20-301. Decision of board — findings necessary for certification. (1) Within 60 days after submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it shall find and determine:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) each of the criteria listed in 75-20-503;

(e) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct shall be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems, and

(iii) that the facility will serve the interests of utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience, and necessity;

(h) that the department of health or board of health have issued a decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) of this section, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) of this section;

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities.

History: En. Sec. 10, Ch. 327, L. 1973; amd. Sec. 10, Ch. 494, L. 1975; R.C.M. 1947, 70-810(1), (3), (4); amd. Sec. 1, Ch. 69, L. 1979; amd. Sec. 15, Ch. 676, L. 1979.

75-20-302. Conditions imposed. If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

History: En. Sec. 18, Ch. 327, L. 1973; amd. Sec. 16, Ch. 494, L. 1975; R.C.M. 1947, 70-810(2); amd. Sec. 16, Ch. 676, L. 1979.

75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons therefor.

(3) Any certificate issued by the board shall include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facility;

(v) a plan for monitoring environmental effects of the proposed facility; and

(vi) a time limit as provided in subsection (4), during which construction of the facility must be completed;

(b) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) The board shall issue as part of the certificate the following time limits during which construction of a facility must be completed:

(a) For a facility as defined in (b) or (c) of 75-20-104(7) that is more than 30 miles in length, the time limit is 10 years.

(b) For a facility as defined in (b) or (c) of 75-20-104(7) that is 30 miles or less in length, the time limit is 5 years.

(c) The time limit shall be extended for periods of 2 years each upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction. Under this subsection, a good faith effort to complete construction includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced.

History: En. Sec. 11, Ch. 327, L. 1973; amd. Sec. 11, Ch. 494, L. 1975; R.C.M. 1947, 70-811(1), (2); amd. Sec. 1, Ch. 120, L. 1979.

Compiler's Comments

Effective date Sec. 2, Ch. 120, L. 1979, provided "This act is effective on passage and approval." Approved March 19, 1979."

75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully

comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a utility or person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of subsections (2)(c), (3)(b), and (3)(c) of 75-20-301 and 75-20-501(5) and the requirements of subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in subsections (10)(b), (c), (d), or (e) of 75-20-104, for an associated facility defined in subsection (3) of 75-20-104, or for any portion of or process in a facility defined in subsection (10)(a) of 75-20-104 to the extent that the process or portion of the facility is not subject to a permit issued by the department of health or board of health.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection shall be credited toward the fee paid under 75-20-215 to the extent the data or evidence presented at the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter.

(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a).

History: En. Sec. 11, Ch. 327, L. 1973; amd. Sec. 11, Ch. 494, L. 1975; R.C.M. 1947, 70-811(3), 4; amd. Sec. 17, Ch. 676, L. 1979; amd. Sec. 7, Ch. 539, L. 1981.

Compiler's Comments

1981 Amendment: Added subsections (3) through (7).

Effective Date: Section 9 Ch. 539, L. 1981, provided "This act is effective on passage and approval." Approved April 29, 1981.

Part 4

Postcertification and Legal Responsibilities

75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate — exceptions. (1) Notwithstanding any other law, no state or regional agency or municipality or other local government may require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the state air and water quality agency or agencies shall retain authority which they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility.

History: En. Sec. 17, Ch. 327, L. 1973; amd. Sec. 17, Ch. 494, L. 1975; R.C.M. 1947, 70-817; amd. Sec. 18, Ch. 676, L. 1979.

75-20-402. Monitoring. The board, the department, the department of health, and the board of health shall monitor the operations of all certificated facilities for assuring continuing compliance with this chapter and certificates issued hereunder and for discovering and preventing noncompliance with this chapter and the certificates. The applicant shall pay all expenses related to the monitoring plan established in subsection (3)(a)(v) of 75-20-303 to the extent federal funds available for the facility, as determined by the department of health, have not been provided for such purposes.

History: En. Sec. 28, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 28, Ch. 494, L. 1975; R.C.M. 1947, 70-828(3); amd. Sec. 19, Ch. 676, L. 1979.

75-20-403. Revocation or suspension of certificate. A certificate may be revoked or suspended by the board:

(1) for any material false statement in the application or in accompanying statements or studies required of the applicant if a true statement would have warranted the board's refusal to grant a certificate;

(2) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(3) for violation of any provision of this chapter, the rules issued thereunder, or orders of the board or department.

History: En. Sec. 18, Ch. 327, L. 1973; amd. Sec. 18, Ch. 494, L. 1975; R.C.M. 1947, 70-818(1).

75-20-404. Enforcement of chapter by residents. (1) A resident of this state with knowledge that a requirement of this chapter or a rule adopted under it is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule,

the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this chapter or a rule adopted under it is not being enforced, the court may ordar the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

History: En. Sec. 19, Ch. 327, L. 1973; amd. Sec. 19, Ch. 494, L. 1975; R.C.M. 1947, 70-819(1), (2).

75-20-405. Action to recover damages to water supply. An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedies enumerated in this section do not exclude the use of any other remedy which may be available under the laws of the state.

History: En. Sec. 19, Ch. 327, L. 1973; amd. Sec. 19, Ch. 494, L. 1975; R.C.M. 1947, 70-819(3).

75-20-406. Judicial review of board, board of health, and department of health decisions. (1) Any active party as defined in 75-20-221 aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction.

(2) The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act.

(3) When the board of health or department of health conducts hearings pursuant to 75-20-216(3) and 75-20-218 and the applicant is granted a permit or certification, with or without conditions, pursuant to the laws administered by the department of health and the board of health and this chapter, the decision may only be appealed in conjunction with the final decision of the board as provided in subsections (1) and (2). If a permit or certification is denied by the department of health or the board of health, the applicant may:

(a) appeal the denial under the appellate review procedures provided in the laws administered by the department of health and the board of health; or

(b) reserve the right to appeal the denial by the department of health or the board of health until after the board has issued a final decision.

(4) Nothing in this section may be construed to prohibit the board from holding a hearing as herein provided on all matters that are not the subject of a pending appeal by the applicant under subsection (3)(a).

History: En. Sec. 12, Ch. 327, L. 1973; amd. Sec. 12, Ch. 494, L. 1975; R.C.M. 1947, 70-812; amd. Sec. 28, Ch. 676, L. 1979; amd. Sec. 8, Ch. 539, L. 1981.

Compiler's Comments

1981 Amendment: Added subsections (3) and (4).

Effective Date: Section 9, Ch. 539, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

75-20-407. Jurisdiction of courts restricted. Except as expressly set forth in 75-20-401, 75-20-406, and 75-20-408, no court of this state has

jurisdiction to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the board under this chapter or to stop or delay the construction, operation, or maintenance of a facility, except to enforce compliance with this chapter or the provisions of a certificate issued hereunder pursuant to 75-20-404 and 75-20-405 or 75-20-408.

History: En. Sec. 13, Ch. 327, L. 1973; amd. Sec. 13, Ch. 494, L. 1975; R.C.M. 1947, 70-813.

75-20-408. Penalties for violation of chapter — civil action by attorney general. (1) (a) Whoever commences to construct or operate a facility without first obtaining a certificate required under 75-20-201 or a waiver thereof under 75-20-304(2) or having first obtained a certificate, constructs, operates, or maintains a facility other than in compliance with the certificate or violates any other provision of this chapter or any rule or order adopted thereunder or knowingly submits false information in any report, 10-year plan, or application required by this chapter or rule or order adopted thereunder or causes any of the aforementioned acts to occur is liable for a civil penalty of not more than $10,000 for each violation.

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of the first judicial district of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than $10,000 for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in subsections (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to enforce this chapter or a certificate issued hereunder. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(4) The department shall also enforce this chapter and bring legal actions to accomplish the enforcement through its own legal counsel.

(5) All fines and penalties collected shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter.

History: En. Sec. 21, Ch. 327, L. 1973, amd. Sec. 2, Ch. 270 L. 1975, amd. Sec. 21, Ch. 494, L. 1975; R.C.M. 1947, 70-821; amd. Sec. 16, Ch. 68, L. 1979; amd. Sec. 21, Ch. 676, L. 1979.

75-20-409. Optional annual installments for location of facility on landowner's property. A landowner upon whose land a facility is proposed to be located shall have the option of receiving any negotiated settlement for use of his land, if and when the land is used for a facility, by easement, right-of-way, or other legal conveyance in either a lump sum or in not more than five consecutive annual installments.

History: En. Sec. 1, Ch. 71, L. 1979.

75-20-410. Order not stayed by appeal — stay or suspension by court — limitations. Notwithstanding any contrary provision in the

law, the pendency of an appeal from a board order does not automatically stay or suspend the operation of the order. During the pendency of the appeal, the court may upon motion by one of the parties stay or suspend, in whole or in part, the operation of the board's orders on terms the court considers just. The court's action must be in accordance with the practice of courts exercising equity jurisdiction, subject to the following limitations:

(1) No stay may be granted without notice to the parties and an opportunity to be heard by the court.

(2) No board order may be stayed or suspended without finding that irreparable damage would otherwise result to the party seeking the stay or suspension, and any other stay or suspension of a board order must specify the nature of the damage.

History: En. Sec. 24, Ch. 676, L. 1979.

Compiler's Comments

Codification Sec. 27, Ch. 676, L. 1979, provided: "It is the intent of the legislature that sections 24 and 25 become an integral part of Title 75, chapter 20, MCA, and that the provisions of that chapter apply to sections 24 and 25." Sections 24 and 25 are codified as 75-20-410 and 75-20-411.

75-20-411. Surety bond — other security. If an order of the board is stayed or suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning for review answer for all damages caused by the delay in enforcing the order of the board; except that the cost of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon final resolution of an appeal, he does not forfeit bond nor is he responsible for damages caused by delay.

History: En. Sec. 25, Ch. 676, L. 1979.

Compiler's Comments

Codification Sec. 27, Ch. 676, L. 1979, provided: "It is the intent of the legislature that sections 24 and 25 become an integral part of Title 75, chapter 20, MCA, and that the provisions of that chapter apply to sections 24 and 25." Sections 24 and 25 are codified as 75-20-410 and 75-20-411.

Part 5

Long-Range Plans

75-20-501. Annual long-range plan submitted — contents — available to public. (1) Each utility and each person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

(2) The plan shall be submitted by April 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the utility or person whose construction is projected to commence during the ensuing 10 years, as well as those facilities to be removed from service during the planning period;

(b) in the case of utility facilities, a description of efforts by the utility or person to coordinate the plan with other utilities or persons so as to provide a coordinated regional plan for meeting the energy needs of the region;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts

to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility or person and explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(3) The plan shall be furnished to the governing body of each county in which any facility included in the plan under (2)(a) of this section is proposed to be located and made available to the public by the department. The utility or person shall give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental sciences, the department of highways, the department of public service regulation, the department of state lands, the department of fish, wildlife, and parks, and the department of commerce. Citizen environmental protection and resource planning groups and other interested persons may obtain a plan by written request and payment therefor to the department.

(4) A rural electric cooperative may furnish the department with a copy of the long-range plan and 2-year work plan required to be completed under federal rural electrification requirements in lieu of the long-range plan required in subsection (1).

(5) No person may file an application for a facility unless the facility had been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department.

History: En. Sec. 14, Ch. 327, L. 1973; amd. Sec. 40, Ch. 213, L. 1975; amd. Sec. 14, Ch. 494, L. 1975; R.C.M. 1947, 70-814; amd. Sec. 17, Ch. 68, L. 1979; amd. Sec. 3, Ch. 553, L. 1979; amd. Sec. 22, Ch. 676, L. 1979; amd. Sec. 6, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment Substituted "department of commerce" for "department of community affairs" in (3).

Transfer of Function Section 6, Ch. 274, L. 1981, provided in part: "(1) The department of community affairs is abolished.

(2) The following functions of the department of community affairs are transferred to the department of commerce: . . .

(e) relating to recommendations concerning major facility siting and contained in 75-20-211, 75-20-216, and 75-20-501; . . ."

75-20-502. Study of included facilities. If a utility or person lists and identifies a proposed facility in its plan, submitted pursuant to 75-20-501, as one on which construction is proposed to be commenced within the 5-year period following submission of the plan, the department shall commence examination and evaluation of the proposed site to determine whether construction of the proposed facility would unduly impair the environmental values in 75-20-503. This study may be continued until such time as a person files an application for a certificate under 75-20-211. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate.

History: En. Sec. 15, Ch. 327, L. 1973; amd. Sec. 15, Ch. 494, L. 1975; R.C.M. 1947, 70-815.

75-20-503. Environmental factors evaluated. In evaluating long-range plans, conducting 5-year site reviews, and evaluating applications for

certificates, the board and department shall give consideration to the following list of environmental factors, where applicable, and may by rule add to the categories of this section:

(1) energy needs:

(a) growth in demand and projections of need;

(b) availability and desirability of alternative sources of energy;

(c) availability and desirability of alternative sources of energy in lieu of the proposed facility;

(d) promotional activities of the utility which may have given rise to the need for this facility;

(e) socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality;

(f) conservation activities which could reduce the need for more energy;

(g) research activities of the utility of new technology available to it which might minimize environmental impact;

(2) land use impacts:

(a) area of land required and ultimate use;

(b) consistency with areawide state and regional land use plans;

(c) consistency with existing and projected nearby land use;

(d) alternative uses of the site;

(e) impact on population already in the area, population attracted by construction or operation of the facility itself;

(f) impact of availability of energy from this facility on growth patterns and population dispersal;

(g) geologic suitability of the site or route;

(h) seismologic characteristics;

(i) construction practices;

(j) extent of erosion, scouring, wasting of land, both at site and as a result of fossil fuel demands of the facility;

(k) corridor design and construction precautions for transmission lines or aqueducts;

(l) scenic impacts;

(m) effects on natural systems, wildlife, plant life;

(n) impacts on important historic architectural, archeological, and cultural areas and features;

(o) extent of recreation opportunities and related compatible uses;

(p) public recreation plan for the project;

(q) public facilities and accommodation;

(r) opportunities for joint use with energy-intensive industries or other activities to utilize the waste heat from facilities;

(s) opportunities for using public lands for location of facilities whenever as economically practicable as the use of private lands and compatible with the requirements of this section;

(3) water resources impacts:

(a) hydrologic studies of adequacy of water supply and impact of facility on streamflow, lakes, and reservoirs;

(b) hydrologic studies of impact of facilities on groundwater;

(c) cooling system evaluation, including consideration of alternatives;

(d) inventory of effluents, including physical, chemical, biological, and radiological characteristics;

(e) hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials, and effect of discharge on bottom sediments;

(f) relationship to water quality standards;

(g) effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses;

(h) relationship to projected uses;

(i) relationship to water rights;

(j) effects on plant and animal life, including algae, macroinvertebrates, and fish population;

(k) effects on unique or otherwise significant ecosystems, e.g. wetlands;

(l) monitoring programs;

(4) air quality impacts:

(a) meteorology—wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion;

(b) topography—factors affecting dispersion;

(c) standards in effect and projected for emissions;

(d) design capability to meet standards;

(e) emissions and controls:

(i) stack design;

(ii) particulates;

(iii) sulfur oxides;

(iv) oxides of nitrogen; and

(v) heavy metals, trace elements, radioactive materials, and other toxic substances;

(f) relationship to present and projected air quality of the area;

(g) monitoring program;

(5) solid wastes impacts:

(a) solid waste inventory;

(b) disposal program;

(c) relationship of disposal practices to environmental quality criteria;

(d) capacity of disposal sites to accept projected waste loadings;

(6) radiation impacts:

(a) land use controls over development and population;

(b) wastes and associated disposal program for solid, liquid, radioactive, and gaseous wastes;

(c) analyses and studies of the adequacy of engineering safeguards and operating procedures;

(d) monitoring—adequacy of devices and sampling techniques;

(7) noise impacts:

(a) construction period levels;

(b) operational levels;

(c) relationship of present and projected noise levels to existing and potential stricter noise standards;

(d) monitoring—adequacy of devices and methods.

History: En. Sec. 16, Ch. 327, L. 1973; amd. Sec. 16, Ch. 494, L. 1975; R.C.M. 1947, 70-816; amd. Sec. 2, Ch. 69, L. 1979; amd. Sec. 23, Ch. 676, L. 1979.

Parts 6 through 9 reserved

Part 10

Geothermal Exploration

75-20-1001. Geothermal exploration — notification of department. The board shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation related to the possible future development of a facility employing geothermal resources to comply with the following requirements:

(1) notify the department of the proposed action,

(2) submit to the department a description of the area involved,

(3) submit to the department a statement of the proposed activities to be conducted and the methods to be utilized;

(4) submit to the department geological data reports at such times as may be required by the rules, and

(5) submit such other information as the board may require in the rules.

History: En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-832(3).

Part 11

Energy Conversion Facility
(Repealed, Sec. 28, Ch. 676, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections

75-20-1101 through 75-20-1105. En. 70-825 through 70-829 by Sec. 1 through 5, Ch. 517, L. 1975; R.C.M. 1947, 70-825 through 70-829.

Part 12

Nuclear Energy Conversion

75-20-1201. Purpose — findings as to nuclear safety — reservation of nuclear facility approval powers to the people. (1) The people of Montana find that substantial public concern exists regarding nuclear reactors and other major nuclear facilities, including the following unresolved issues:

(a) the generation of waste from nuclear facilities, which remains a severe radiological hazard for many thousands of years and to which no means of containment assuring the protection of future generations exists;

(b) the spending of scarce capital to pay the rapidly increasing costs of nuclear facilities, preventing the use of that capital to finance renewable energy sources which hold more promise for supplying useful energy, providing jobs, and holding down energy costs;

(c) the liability of nuclear facilities to sudden catastrophic accidents which can affect large areas of the state, thousands of people, and countless future generations;

(d) the refusal of utilities, industry, and government to assume normal financial responsibility for compensating victims of such nuclear accidents;

(e) the impact of nuclear facilities on the proliferation of nuclear bombs and terrorism;

(f) the increasing pattern of abandonment of used nuclear facilities by their owners, resulting in radiological dangers to present and future societies as well as higher public costs for perpetual management, and

(g) the detrimental effect of the large uranium import program necessary to the expansion of nuclear power on American energy independence, defense policy, and economic well being.

(2) Therefore, the people of Montana reserve to themselves the exclusive right to determine whether major nuclear facilities are built and operated in this state.

History: En. Sec. 1, I.M. 80, app. Nov. 7, 1978.

Compiler's Comments

Severability. Section 7 of Initiative 80 was a severability clause.

Effective date. Initiative 80 was approved at the general election held November 7, 1978, and was effective July 1, 1979.

75-20-1202. Definitions. As used in this part and 75-20-201 through 75-20-203, the following definitions apply:

(1) (a) "Nuclear facility" means each plant, unit, or other facility designed for, or capable of,

(i) generating 50 megawatts of electricity or more by means of nuclear fission,

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels, or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility;

(b) "nuclear facility" does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy.

(2) "Facility," as defined in 75-20-104(7) is further defined to include any nuclear facility as defined in subsection (1)(a) of this section.

History: En. Sec. 2, I.M. 80, app. Nov. 7, 1978.

75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear facility. (1) The board may not issue a certificate to construct a nuclear facility unless it finds that:

(a) no legal limits exist regarding the rights of a person or group of persons to bring suit for and recover full and just compensation from the designers, manufacturers, distributors, owners, and/or operators of a nuclear facility for damages resulting from the existence or operation of the facility; and further, that no legal limits exist regarding the total compensation which may be required from the designers, manufacturers, distributors, owners, and/or operators of a nuclear facility for damages resulting from the existence or operation of such facility;

(b) the effectiveness of all safety systems, including but not limited to the emergency core cooling systems, of such nuclear facility has been demonstrated, to the satisfaction of the board, by the comprehensive laboratory testing of substantially similar physical systems in actual operation;

(c) the radioactive materials from such nuclear facilities can be contained with no reasonable chance, as determined by the board, of intentional or unintentional escape or diversion of such materials into the natural environment in such manner as to cause substantial or long-term harm or hazard to present or future generations due to imperfect storage technologies, earthquakes or other acts of God, theft, sabotage, acts of war or other social instabilities, or whatever other causes the board may deem to be reasonably possible, at any time during which such materials remain a radiological hazard; and

(d) the owner of such nuclear facility has posted with the board a bond totalling not less than 30% of the total capital cost of the facility, as estimated by the board, to pay for the decommissioning of the facility and the decontamination of any area contaminated with radioactive materials due to the existence or operation of the facility in the event the owner fails to pay the full costs of such decommissioning and decontamination. Excess bond, if any, shall be refunded to the owner upon demonstration, to the satisfaction of the board, that the site and environs of the facility pose no radiological danger to present or future generations and that whatever other conditions the board may deem reasonable have been met.

(2) Nothing in this section shall be construed as relieving the owner of a nuclear facility from full financial responsibility for the decommissioning of such facility and decontamination of any area contaminated with radioactive materials as a result of the existence or operation of such facility at any time during which such materials remain a radiological hazard.

History: En. Sec. 4, I.M. 80, app. Nov. 7, 1978.

75-20-1204. Annual review of evacuation and emergency medical aid plans. (1) The governor shall annually publish, publicize, and release to the news media and to the appropriate officials of affected communities, in a manner designed to inform residents of the affected communities, the entire evacuation plan specified in the licensing of each certified nuclear facility within this state. Copies of such plan shall be made available to the public upon request at no more than the cost of reproduction.

(2) The governor shall establish procedures for annual review by state and local officials of established evacuation and emergency medical aid plans with regard for, but not limited to, such factors as the adequacy of such plans, changes in traffic patterns, population densities, the locations of schools, hospitals, and industrial developments, and other factors as requested by locally elected representatives.

History: En. Sec. 5, I.M. 80, app. Nov. 7, 1978.

75-20-1205. Emergency approval authority invalid for nuclear facilities. Notwithstanding the provisions of subsections (2) and (3) of 75-20-304, the board may not waive compliance with any of the provisions of this part or 75-20-201 through 75-20-203 relating to certification of a nuclear facility.

History: En. Sec. 6, I.M. 80, app. Nov. 7, 1978.

Energy Division
Capitol Station
Helena, MT 59620

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